184 HP

MONTANA LEGISLATIVE HISTORY

Chapter 492 19 95

Bill H _____ S 331 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	Mar 13	✓ C	Hearing Date(s)	Feb 13	✓ C
	Mar 21	✓ C		Feb 18	✓ C
		C			C
		C			C
Date Out	Mar 22	✓ C		Feb 20	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

2/20	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	88	6
3/14	3RD READING CONCURRED	91	9
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 240		
	EFFECTIVE DATE: 10/01/95		

SB 330 INTRODUCED BY SWYSGOOD, ET AL.

GENERALLY REVISE WATER QUALITY NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO NATURAL RESOURCES		
2/09	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	34	16
2/22	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/13	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED	63	37
3/28	3RD READING CONCURRED	58	39
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	35	10
4/04	3RD READING AMENDMENTS CONCURRED	37	12
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 495		
	EFFECTIVE DATE: 10/01/95		

SB 331 INTRODUCED BY BECK, ET AL.

GENERALLY REVISE THE MONTANA WATER QUALITY ACT

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO NATURAL RESOURCES		
2/09	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	36	14
2/22	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		

3/13	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED	67	33
3/28	3RD READING CONCURRED	63	35
	RETURNED TO SENATE WITH AMENDMENTS		
3/31	REVISED FISCAL NOTE RECEIVED		
3/31	REVISED FISCAL NOTE PRINTED		
4/03	2ND READING AMENDMENTS CONCURRED	34	11
4/04	3RD READING AMENDMENTS CONCURRED	37	12
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 497		
	EFFECTIVE DATE: 04/15/95		

SB 332 INTRODUCED BY WELDON, ET AL.

REVISE CONDITIONS FOR SALE OF A MOBILE HOME IN A MOBILE HOME PARK

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & INDUSTRY		
2/15	HEARING		
2/16	TABLED IN COMMITTEE		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING DO PASS MOTION FAILED	20	28
2/18	2ND READING INDEFINITELY POSTPONED	33	16

SB 333 INTRODUCED BY BISHOP

REQUIRE THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO JUDICIARY		
2/09	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED AS AMENDED	50	0
2/18	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/14	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	83	15
3/27	3RD READING CONCURRED	82	16
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	15	29
4/01	2ND READING AMENDMENTS NOT CONCURRED	37	8
4/03	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING		
4/04	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	24	25
4/04	2ND READING AMENDMENTS NOT CONCURRED	29	20

SENATE BILL NO. 331

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT; ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT RULES OR STANDARDS BE ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE; AND AMENDING SECTIONS 75-5-103, 75-5-106, 75-5-201, 75-5-301, 75-5-302, 75-5-304, 75-5-305, 75-5-306, 75-5-401, 75-5-403, 75-5-605, 75-5-611, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA."

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101. It is concerned that implementation of the water quality laws has in the past been too dependent on assumptions and conjecture springing from experiences and circumstances from other states and has not been sufficiently based on the conditions and needs of our state. The legislature intends that, in promulgating rules under this bill, the board of health and environmental sciences should seriously consider the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific justification and never on the basis of projections or conjecture. The legislature is specifically concerned that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as a practical matter, be unenforceable.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Standards more stringent than federal standards.** (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or

final federal regulations, guidelines, or criteria if:

(a) the board makes written findings, based on sound scientific or technical evidence in the record, which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of the state; and

(b) the action is taken pursuant to 75-5-307.

(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the public health and environmental information and studies contained in the record that forms the basis for the board's conclusion.

NEW SECTION. **Section 2. Standards of water quality.** (1) Notwithstanding the provisions of [section 1], in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:

(a) Except as provided in subsection (1)(b), the board shall use as standards of water quality values that are no more stringent than the values set forth in the following table:

Water Quality Criteria

Parameter	Human Health	Aquatic Life (Acute)	Aquatic Life (Chronic)
A. Metal Parameters	(expressed in micrograms per liter)		
Aluminum	-	750	87
Antimony	6	-	-
Arsenic	50	360	190
Beryllium	4	-	-
Barium	2,000	-	-
Cadmium	5	3.9*	1.1*
Chromium	100	16**	11**
Copper	1,300	18*	12*
Fluoride	4,000	-	-
Iron	300	-	1,000
Lead	5	82*	3.2*
Manganese	50	-	-

Mercury	2	2.4	0.012
Nickel	100	1,400*	160*
Selenium	50	20	5
Silver	50	4.1	-
Thallium	2	-	-
Zinc	5,000	120*	110*
B. Other Parameters (expressed in milligrams per liter)			
Nitrate	10	-	-
Ammonia	-	25***	2.2***
pH	6 to 9 std. units		
Sulfate	1,800		

Notes: All metal parameters are stated as dissolved, and compliance must be measured using dissolved methods.

* Hardness dependent (value assumes hardness if 100)

** Hexavalent

*** Ammonia is pH and temperature dependent (value of pH = 7; T = 10);

(b) For parameters not included in subsection (1)(a), the board shall use maximum contaminant levels as established under 40 CFR, part 141, as the standards of water quality for human health.

(c) For parameters not included in subsection (1)(a) and for which maximum contaminant levels have not been established, the board may formulate and adopt standards of water quality for human health that satisfy the following criteria:

(i) The values must be based on scientifically valid studies and derived in a manner consistent with draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental pollutants.

(ii) For carcinogens, the values must represent a concentration associated with an excess lifetime cancer risk level because of continuous lifetime exposure not to exceed 1×10^{-4}.

(iii) For systemic toxicants, the values must represent a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of deleterious effects during a lifetime.

(d) For all metal parameters not included in subsection (1)(a), the values used by the board as

standards of water quality must be stated as dissolved concentrations.

(2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any parameter.

(3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that cause effects other than cancer or mutation.

NEW SECTION. **Section 3. Site-specific standards of water quality for aquatic life.** Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

Section 4. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters ~~for a parameter~~. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) (a) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) (a) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, ~~a~~ political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor~~;~~, or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

(23) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground~~; however, this subsection~~.

(b) The term does not apply to:

(i) privately owned ponds or lagoons; or

(ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 5. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings involving the same project conducted by the department of state lands under Title 82, chapter 4, and by the department of natural resources and conservation under Title 75, chapter 20. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 6. Section 75-5-201, MCA, is amended to read:

"75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this

chapter and shall ensure that requirements imposed by the rules are cost-effective and economically and technologically feasible.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 7. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of ~~75-5-302 through 75-5-307 and~~ 80-15-201 and this chapter, the board shall:

(1) establish ~~and modify~~ the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for intermittent or ephemeral streams that do not support a viable fishery;

(2) formulate and adopt standards of water ~~purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality that are cost-effective and economically and technologically feasible;

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water ~~purity and classification~~ quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified~~,~~ and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; ~~and~~

(c) establish criteria for determining whether a proposed activity or class of activities will result in

nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; ~~and~~

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that a domestic septic system and drain field that meets the minimum state standards results in nonsignificant changes to water quality and is not required to undergo review under 75-5-303(3) unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 8. Section 75-5-302, MCA, is amended to read:

"**75-5-302. Revised classifications not to lower water quality standards -- exception.** In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department acquires information that a body of water is misclassified, the board shall, within 60 days of acquiring the information, take action pursuant to 75-5-307 to correct the misclassification."

Section 9. Section 75-5-304, MCA, is amended to read:

"**75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in 75-5-103;

(c) adopt toxic effluent standards and prohibitions; and

(d) establish standards of performance for new point source discharges.

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically and technologically feasible."

Section 10. Section 75-5-305, MCA, is amended to read:

"**75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.** (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, ensuring that the requirements are cost-effective and economically and technologically feasible.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 11. Section 75-5-306, MCA, is amended to read:

"**75-5-306. Purer than natural unnecessary -- dams.** (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving ~~stream~~ water as long as the minimum treatment requirements established under this chapter are met.

(2) For the purpose of issuing permits under this part, ~~"Natural"~~ "natural" refers to ~~conditions or material present from runoff or percolation over which man has no control~~ the water quality as of July 1, 1971, or to runoff or percolation from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural."

Section 12. Section 75-5-401, MCA, is amended to read:

"**75-5-401. Board rules for permits.** (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. The board may not require a permit for the discharge of ground water that is not altered from its ambient quality by the discharger as long as existing uses are not impacted in the receiving state waters.

(2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant

to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section 13. Section 75-5-403, MCA, is amended to read:

"**75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The department shall review for completeness all applications for permits within 30 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. ~~Such~~ The hearing ~~shall~~ must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~ is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, ~~no~~ an order modifying ~~his~~ the permit ~~shall be~~ is not effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

~~(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.~~"

Section 14. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any industrial or other wastes where they will ~~in a location where they are likely to~~ cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

Section 15. Section 75-5-611, MCA, is amended to read:

"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

(a) the provision of statute, rule, permit, or approval alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the specific nature of corrective action that the department requires;

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

(i) does not involve assessment of an administrative penalty; or

(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or

is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, ~~which petition~~ and the board may grant the petition for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action

for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each violation~~;~~. ~~however~~ However, the maximum penalty may not exceed $100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 16. Section 75-5-614, MCA, is amended to read:

"**75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~, and the court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 17. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued

under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the state.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ the violator's ability to pay~~, any~~ and prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, amounts expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and ~~any~~ other matters as justice may require."

Section 18. Section 75-5-636, MCA, is amended to read:

"**75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency ~~which~~ that made the protest. If a violation is established by the investigation of the department, appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the application."

Section 19. Section 75-6-112, MCA, is amended to read:

"**75-6-112. Prohibited acts.** A person may not:

(1) discharge sewage, ~~drainage,~~ industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, ~~drainage,~~ industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, ~~drainage,~~ industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, ~~drainage,~~ wastewater, or sewage disposal before ~~he~~ the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum contaminant level established by the board unless ~~he~~ the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or a rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1 through 3].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0331, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the Montana Water Quality Act (MWQA), and establishing water quality standards; requiring that rules or standards be economically and technologically feasible.

ASSUMPTIONS:

1. The proposed changes to the MWQA and Surface Water Quality Standards would not be acceptable to the Environmental Protection Agency (EPA). The EPA would terminate the Department of Health and Environmental Science's (DHES) agreement for issuance of waste discharge permits under the Federal Clean Water Act. In addition to the EPA requiring a federal permit for all discharges to surface waters, the DHES would still be required to issue permits by the MWQA. The EPA would also adopt water quality standards for Montana, creating two sets of standards for Montana waters.
2. The Governor's Executive Budget, as submitted, provides the basis for determining changes for fiscal impact.
3. Revising the existing water quality standards and nondegradation rules would require one FTE (grade 15) for FY96 only. Normal operating costs, plus an amount for the 11.5% indirect rate and greater than normal travel would be required. Normal office equipment of $5,000 would be needed.
4. Two FTE (grade 15) would be required for at least 5 years to correct the known misclassifications of Montana waters. An average reclassification action takes approximately 4 months and there are 30 known reclassifications.
5. The EPA would not participate in the costs of re-writing the water standards or the costs of reclassification, and new fees could not be charged. Thus, no new revenue would be generated as a result of this bill.
6. Funding for the above positions would be provided by the state special revenue fund, either from overhead revenues, or if this is insufficient, increased fees.
7. Assume an October 1, 1995 effective date, with FY96 expenditures reflected at 75% of the full year.
7. No water standards stricter than the federal standards would be developed.

(continued)

Dave Lewis 2-14-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Sen Tom Beck 2-14-95
TOM BECK, PRIMARY SPONSOR DATE

FISCAL IMPACT:

Expenditures:

DHES - Water Quality Div.:	FY96 Difference	FY97 Difference
FTE	3.00	2.00
Personal services	76,300	68,000
Operating expenses	25,300	23,600
Equipment	15,000	0
Total	116,600	91,600

Funding:

State special revenue (02)	116,600	91,600

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Water dischargers in Montana would be required to have both a state and federal permit, and those affected would be subject to both state and federal surface water quality standards.

TECHNICAL NOTES:
SB330 also requires the re-writing of water quality standards, and one FTE in FY96. If both bills pass, only one FTE would be required.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0331, reference bill as amended

ESCRIPTION OF PROPOSED LEGISLATION:

n act generally revising the Montana Water Quality Act; establishing water quality tandards; and requiring that treatment standards be economically, environmentally, and echnologically feasible.

SSUMPTIONS:

The Executive Budget present law base serves as the starting point from which to calculate any potential fiscal impact from this proposed legislation.

The bill will be effective upon passage and approval. Assume that the FTE, with related operating and equipment, will not be hired until October 1, 1995.

Development of industrial wastewater system design standards and reviewing waste disposal and treatment systems in compliance with the time-frames required by the revisions to 75-5-403, MCA would require 1.00 FTE.

In order to correct the known misclassifications of Montana waters, 2.00 FTE would be required during the 1997 biennium, and for at least three years beyond. An average reclassification action takes approximately four months and there are 30 known reclassifications.

There would be increased travel costs required. Normal operating costs for the FTE and equipment costs of $5,000 per FTE would also be needed. The indirect rates applied to the personal services will be 20.9% in FY96 and FY97 (the fiscal note on the introduced bill was too low).

No standards stricter than the federal standards would be developed.

The Environmental Protection Agency (EPA) will not participate in the costs of reclassification or the cost of reviewing waste disposal and treatment plans and no new fees could be charged. Thus, no new revenue would be generated as a result of this bill.

Funding for the above positions would be provided by the state special revenue fund, either from overhead revenues, or if this is insufficient, increased fees.

ISCAL IMPACT:

xpenditures:

	FY96 Difference	FY97 Difference
TE	3.00	3.00
ersonal Services	76,300	68,000
perating Expenses	29,700	40,000
quipment	15,000	0
Total Expenditures	121,000	108,000
unding:		
tate Special Revenue (02)	121,000	108,000

Dave Lewis 3-31-95

AVE LEWIS, BUDGET DIRECTOR DATE
ffice of Budget and Program Planning

TOM BECK, PRIMARY SPONSOR DATE

asked **Mr. Horpestad** if he would comment on that. He said that many of the rivers have been brought up to a higher standard. The Clark Fork and the Yellowstone have improved significantly.

SEN. BROOKE asked if he thought the bill as introduced would go back to the days that would not allow the department to significantly improve waters. **Mr. Horpestad** said the bill as introduced would have most of the staff of the EPA working on it.

Closing by Sponsor:

SEN. SWYSGOOD said amendments would be offered to the bill, but they were arrived at by the department after the bill was introduced. He said he wasn't sure the amendments would satisfy some of the opponents, but he would hope some of the concerns would be addressed.

HEARING ON SB 331

{Tape: 2; Side: A}

Opening Statement by Sponsor:

SEN. TOM BECK, District No. 28, Deer Lodge, said SB 331 clarifies the Montana Water Quality Act. The purpose of the bill is to clearly define high quality waters, and make the nondegradation process apply to those waters. He said instead of explaining the bill step by step, he will let the experts testify on what they are trying to do with water quality. He said he was not trying to degrade water, but was trying to make drinking water feasible in all areas of the state, from a mine or anything else. He said he had some amendments that were drafted that the department and industry had come to a compromise on.

Proponents' Testimony:

Sandy Stash, Manager of ARCO, said she would like to talk about some of the technical issues that the bill is proposing. The proposal is consistent with EPA policy and what is occurring in other states. Regarding the metals criteria and whether metals should be measured by the dissolved method or the total recoverable method, she referred to a memo from the Office of Water Policy and Technical Guidance of the EPA. A quote from that memo says: "we strongly encourage the application of the Water Effect Ratio (WER) across a watershed or waterbody as opposed to application on a discharger by discharger basis, as a technically sound and an efficient use of resources." **EXHIBIT 9.**

They found that the dissolved metals were the ones that get into the fish, etc., not the total recoverable. Montana currently uses the total recoverable method and the bill suggests that they go to the dissolved metals. The EPA changed their guidance to states and to date 18 states have made that change. **Ms. Stash**

reviewed a chart regarding the clean-up in Silver Bow Creek. **EXHIBIT 10.**

The bill suggests what the numbers should be, and how they should be measured and how decisions should be made.

Alan Joscelyn, Golden Sunlight Mine, said the reason the bill was proposed was a need for definitiveness, consistency, and predictability. There are some significant problems in the Water Quality Act with compliance. He said there is an agreement that some of the points raised by the DHES will be addressed in the amendments. With his experience over the last 5 years he said SB 331 was a good bill.

John Bloomquist, Montana Stock Growers Association said they support SB 331. He said the definition of degradation and state waters was addressed in the bill. It recognizes that certain water bodies like ponds, lagoons, or water that has been used up by the land which are not state waters, and would not be subject to the pollution and other definitions that are in the Act. In Section 7, regarding intermittent streams, it doesn't make sense to make those streams that do not support aquatic life subject to water quality standards.

Larry Brown, Morrison/Maierle Environmental Corporation said he wanted to comment on the aspect of risk as it applies to the standards. The bill will give an opportunity for risk levels to be evaluated from a technical perspective.

Don Peoples, Montana Technology Company of Butte, said that he was in favor of SB 331. The bill is a common sense approach to dealing with water quality standards.

Mr. Leavitt, member of the Tri State Information Council, said he supports the changes that SB 331 is trying to make with the definitions of water quality.

Doug Parker, Crown Butte Mines, said that the Water Quality Act was an unworkable law and the changes needed to be made. He reviewed the arsenic changes in water that is proposed in SB 331. **EXHIBIT 11.**

He said he realized the DHES had concerns about the standards that are in the proposed bill, but they will be addressed in the pending amendments and those changes should satisfy the EPA and the department's concerns. The proposed change concerning intermittent streams that is in the bill is also important. He supports SB 331.

Collin Bangs, Montana Association of Realtors, said they have met with the health department and negotiated a change that would allow the use of septic tanks and drain fields in 80%-90% in areas that previously could not. The bill gives the state of

Montana a lot better protection of their water than what they had 2 years ago.

John Youngberg, representing the Montana Farm Bureau Federation, said the questions that would be asked would be about the impact on human health with the standards. He said they have been told that they were the standards from the EPA. SB 331 will not harm human health or aquatic life. He urges the committee's support of the bill.

Jack Lynch, Chief Executive of Butte Silverbow, said with the issue of standards come the compliance and then comes the issue of cost. Butte Silverbow, in an effort to comply with some of the standards, has spent millions of dollars on sewer and landfill. The proposals of SB 331 are reasonable and attainable. He urged the passage of SB 331.

{Comments: the following proponents did not have time to testify do to the lack of time.}

Mike Murphy, representing the Montana Water Resources Association, supports SB 331.

Bob Williams, Montana Mining Association, supports SB 331.

Don Allen, Montana Wood Products Association, supports SB 331.

Candace Torgerson, Montana Cattlewomens Association, supports SB 331.

THE FOLLOWING WRITTEN TESTIMONY WAS RECEIVED IN SUPPORT OF SB 331:
Pam Willett, Broker/Owner ERA Property Store. EXHIBIT 12.

David Bailey, Kila, Montana. EXHIBIT 13.

Opponents' Testimony:

Hope Stevens, Marysville, asked the committee members to please think carefully about who the people were that were supporting SB 331. They were nearly all large powerful industries. There are a lot of small businesses that employ people that are here to stay because of the high quality of water. Please consider their needs and those of who have children and grandchildren. She said she opposes the bill.

Donald Kern, representing the Citizens' Coalition of Pony, said SB 331 would preclude state water quality standards which were more stringent than federal regulations. SB 331 is a permit to pollute and is a slap in the face to any Montanan who appreciates the clean water supplies. The Berkeley Pit and numerous others remind us of what happens when regulations are not in place. The bill also lowers health standards for arsenic, mercury, copper,

and other heavy metals from mining waste. He said the bill is an attempt to subsidize the mining industries at the expense of the water quality in the streams. He suggested they go elsewhere to conduct their dirty business.

Glenn Marx, Policy Director, Governor Mark Racicot, said the state stands as an opponent to SB 331 as written, but if the department's amendments were adopted, the state would support SB 331. **EXHIBIT 15.**

Steve Pilcher, Administrator Water Quality Division, DHES, said they rise in opposition to SB 331 in its current form. He recognized and extended his appreciation to the sponsor and the industry representatives. He pointed out that DHES's standards were based on federal guidelines and were approved by the federal Environmental Protection Agency. **Mr. Pilcher** asked for the support of the amendments that will be offered to the bill. **(For further DHES comments to the bill, see EXHIBIT 16.)**

Mr. Horpestad gave a visual demonstration of dissolved vs. total recoverable methods for metal parameters. The copper that is settling to the bottom will be available for fish and bugs to eat, and be deposited on stream banks and eventually into the streams in response to thunder storms.

Nick Golder, Rancher, Forsyth, opposes SB 331.

{Comments: Due to so much noise it was difficult to hear Mr. Golder's testimony and was not clear on the tape}

Chris Tweeten, Montana Department of Justice, said they manage the Natural Resource Damage Program that was responsible for litigating the lawsuit against ARCO. He said they were seeing an excess of $600 million in damages in the Clark Fork Valley. If SB 331 is enacted as introduced, it will undercut the scientific basis for the lawsuit that they worked on for 5 years and is now ready to go to trial within 2 years. **Mr. Tweeten** said the amendments that will be offered will address many of their concerns.

Richard Parks, Northern Plains Resource Council, said they rise in opposition to SB 331. The state may resolve their problems, but not necessarily resolve the public's problems. He said they went through a 2 year process to establish the present rules. There has been a lot of discussion that those rules were unworkable, but there were no facts supporting that. It is disrespectful for the time and the amount of money that had been spent on that process and the people involved in the Board of Health rulemaking process to require them to start all over again.

Jim Jensen, Montana Environmental Information Center, said Page 5, Line 7 the definition "industrial waste" is fine, but the change adds: "The term does not mean materials incorporated or

placed into a structure, facility, or location authorized in a permit issued by a state or federal agency." Suppose the Department of State Lands issued a permit for a mine with a tailings pond. They all leak pollutants but they would not have to get a permit from the health department. The bill says it is legal to place materials in a place where they may cause pollution to the water. He urged the committee to table SB 331.

Becky Garland, Lincoln, said SB 331 is bad for Montanans and opposes the bill.

{Comments: the following opponents did not get to testify due to the shortage of time.}

Paul Roos, Fishing Outfitters Association, opposed SB 331.

Joe Gatkoski, Madison Gallatin Alliance composed of 250 members that are opposed to the bill. Please table it.

Debby Smith, Helena Attorney, Sierra Club, opposes the bill.

Brian Kuehl, Great Yellowstone Coalition, opposes the bill and the amendments.

Jim Barrett, Cooke City, Beartooth Alliance, opposes the bill.

Kenneth Knapp, Executive Director, River Action Network, opposes the bill as presently written and any amendments.

Paul Hawks, opposes SB 331.

Laurie Gano, opposes SB 331.

Dave Gano, Melville, Montana. EXHIBIT 14.

{Comments: the meeting adjourned at 3:00 pm and reconvened upon adjournment of the Senate at 6:30 PM.}

{Tape: 2; Side: B}

<u>Questions From Committee Members and Responses</u>:

SEN. FOSTER asked **Mr. Pilcher** if their was a law suit between Arco and the State of Montana, and if it had any effect on SB 331. **Mr. Pilcher** said the lawsuit was not a driving force in their review of SB 331. The concern is whether or not the legislation would have some effect on the departments. **SEN. FOSTER** asked if the department would favor the bill, would it cause harm to the law suit. **Mr. Pilcher** said no, the bill or the amendments would not have an adverse impact on the law suit.

SEN. CHRISTIAENS asked **Mr. Bangs** if he would comment about the sewage disposal issue. **Mr. Bangs** said the regulations that were passed last session have resulted in outlying septic tanks that had been used for years, required advance treatment systems. He said it cost between five thousand ($5,000) and ten thousand dollars ($10,000) more to put in the advance treatment systems. Missoula County does not approve of the advanced treatment system. The problem is the state would require that system and the local counties do not approve the advanced treatment system. There is a huge problem with affordable housing in Montana. The cost of housing in the Missoula area has gone up by 90% in the last 10 years. Therefore, they have to make sure that another five or ten thousand dollars ($5,000 or $10,000) is not added to the cost of the individual houses. **Mr. Bangs** said they feel that they could go back to the regular septic tanks and still protect the water.

SEN. WELDON said if groundwater is contaminated to the standard listed in the bill, and the water is used for drinking water, it says they would be required to shut down the water supply. He asked **Mr. Pilcher** if he would respond to that. **Mr. Pilcher** said that the question is should we allow groundwater to reach 10 milligrams per liter, which would be the maximum nitrate level allowable for public health concerns. The DHES has to review subdivisions concerning the sewage and the water. If the department allowed them to degrade the water to the maximum contaminate level, then that subdivision could not be approved because the groundwater that was used for domestic use would be at the maximum level.

CHAIR. GROSFIELD asked **Mr. Joscelyn** if he could give the committee members some idea of what the amendments would be about. **Mr. Joscelyn** said that after the bill was drafted there was mutual interests addressed by the DHES and industry that involved several meetings, and some amendments were drafted. There were 45 amendments turned into the EQC for formal drafting. Those amendments were points that came up in discussions about the bill. About 99% of the points addressed were agreed upon. They still disagreed on how parameters should be measured and a couple of other areas.

CHAIR. GROSFIELD said **Mr. Tweeten** testified on the amendments from the Attorney General's office on the Natural Resource Damage Program. He asked **Mr. Collins** if he would respond to that. **Rob Collins, Chief Counsel, Natural Resource Damage Program,** said initially they agreed to oppose the bill, but when industry agreed to make some amendments, some of their opposition was addressed. There was still some concern with the site specific criteria and the method of measurement. He said there would be some additional amendments proposed by the DHES. With the amendments that have been proposed and the DHES proposed amendments, the Department of Justice would support the bill.

SEN. BROOKE said Page 12, Lines 9-11 says: "An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period." She asked **Mr. Pilcher** if he thought there would be difficulty in notifying someone within the review period with the staff that they have. He answered that the section she referred to causes considerable problems from the resource standpoint with respect to being able to complete a review within 30 days. The application for some of the projects is lengthy; for example, the 7Up Pete project, it consisted of 27 volumes. To be able to complete a one-time review of an application like that within 30 days was impossible. **SEN. BROOKE** said she had a lot of questions about the bill, but if the amendments address those questions, they would be moot. She asked if Section 13 was amended out of the bill. **Mr. Pilcher** replied that there were amendments that addressed that concern. The initial time-frame will be changed with the amendments.

SEN. BROOKE said she had some concern about the Milltown Dam near Missoula. Discussion has gone on for some time now concerning the toxic waste there. She asked **Mr. Pilcher** what the bill would do to address that situation. He responded that in the bill as introduced, he would have some concerns about the water quality there. But with the amendments he did not think the review on that situation would change from what is already in place. The superfund process has to consider alternatives to the remediation plan, but does not believe SB 331 would have anything to do with that decision.

SEN. KEATING said the matter of "dissolved" and "totally recoverable" has come up several times. He asked **Ms. Stash** if she could give a scientific explanation why totally recoverable may not be necessary. She said the demonstration **Mr. Horpestad** was the best example of total suspended solids. The solid form was not harmful to fish. She read a quote from the Water Policy and Technical Guidance from the United States Environmental Protection Agency, dated October 1993. See **EXHIBIT 9. Page 2.** That quote says: "...This conclusion regarding metal bioavailability is supported by a majority of the scientific community within and outside the agency. One reason is that a primary mechanism for water column toxicity is absorption at the gill surface which requires metals to be in the dissolved form." Copper is a metal that is immediately dissolved and is bioavailable to the fish and should be protected against. There was some talk about costs of total recoverable vs. dissolved. The difference in the cost of testing those would be about $12.00 per sample to measure what the correct way would be.

Ms. Stash said there was reference made regarding a law suit from an individual company. She questioned whether it was good policy to set policy for an entire state based on a single pending lawsuit. **SEN. KEATING** said the example she referred to was with copper; that the fish could not take them in through their gils because of the size of the chunks.

SEN. KEATING asked **Ms. Stash** if that applied to all metals. She answered yes it does. She said what makes metals problematic is when they go from metals to a metals salt.

SEN. KEATING said 10 milligrams of nitrate per liter was considered safe until SB 401 was enacted, and was safe for a fetus. Then someone says they would compromise and say 5 milligrams per liter. Why did the department go to 2.5 milligrams per liter and then someone says they would be happy with 5. **Mr. Pilcher** responded that 10 was a maximum contaminate level and was designed to protect the people consuming that water. He said 10 would be enough of a threat to infants that the water must be protected. It also depends upon the source of the nitrates and other factors. **Mr. Pilcher** said one level is based on public health and the other is on nondegradation of water.

SEN. KEATING said SB 401 dealt with nondegradation and mixing zones. Nothing was ever said about septic tanks or subdivisions. He said he knew that they were not supposed to degrade the water and public health is supposed to be protected. However, they also have to provide for the public to be able to live some place. When nondegradation levels are unachievable or so expensive, the department has actually made rules against the public. Somewhere there has to be a happy medium for nondegradation, the public, and the protection of public health. He said if he had a septic tank and drain field on his land, it should be his prerogative if he wants to degrade the water regardless of the law. He asked **Mr. Pilcher** why there wasn't a happy medium that serves all purposes. He replied that when SB 401 was enacted, he could recall many of the same statements that it was a mining industry bill, but **Dan Frazer**, who was then Chief of the Water Quality Bureau, made it clear that nondegradation could apply to a lot of activities not just mining. He said **SEN. KEATING** was right that they had to achieve a balance. The department made enough changes to allow continued growth in the State of Montana. Many subdivisions were reviewed and approved with on-site drain fields, so they were not being shut down completely. In areas where the level of nitrates were moving up toward public health standard, the department has asked for advanced treatment. Many subdivisions have been approved with the advanced treatment systems installed, and were working fairly well. The department will revisit that to make sure that they were being reasonable.

SEN. CHRISTIAENS said if there are 45 amendments to the bill, he didn't feel comfortable asking questions, not knowing what the amendments would do to the bill.

CHAIR. GROSFIELD said he had been informed that the amendments would be delivered to the committee by Thursday.

Closing by Sponsor:

SEN. BECK said in the demonstration, the committee members saw the difference between the dissolved metals and recoverable. He said the same metals are in the solid stone as what was dissolved. He said he left it up to the DHES and industry to work out the amendments. There are two amendments that they were not yet in agreement on. He said as **Mr. Marx** pointed out, one-part per billion for carcinogenic standards was pretty severe for industry to try to comply with. Industry wanted to go to one-part per ten-thousand and arsenic would be one in one-thousand. **SEN. BECK** said he would have to talk to the people that drafted the bill before he would make a commitment on that. There has to be some common sense in the law and where does the parameter end regarding drinking water. He said in the beginning he had 10 milligrams of nitrate per liter in the bill, and the people from the Helena Valley asked very strongly for an amendment. They were putting in above ground septic systems that were costing up to ten thousand dollars ($10,000) as opposed to about twenty-five hundred dollars ($2,500) for a normal septic system. If the 10 milligram per liter standard had been in there, they could have met the standard. There have been a lot of amendments and compromise on the bill, and industry and the department seem to be working out the problems. **SEN. BECK** would appreciate the committee giving serious consideration to the amendments to the bill.

{Tape: 3; Side: A; Comments: there was so much background noise it was nearly impossible to hear the testimony or the tape}

HEARING ON SB 362

Opening Statement by Sponsor:

SEN. LARRY TVEIT, District No. 50, Fairview, said SB 362 is an act exempting certain activities from groundwater permit requirements. The rules adopted by the Board of Health for administration of the Montana Water Quality Act exempt some activities from groundwater requirements. A recent legislative audit performance review pointed out that the statutory authority for agencies other than DHES, gave them some jurisdiction over groundwater protection and was not clear. The report recommended clarifying in statute the authority of DHES to grant exemptions by referral to other permitting agencies for groundwater protection. In the alternative, the report recommended eliminating the exemptions that created the double permitting process.

Proponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, said she attended meeting reviewing the audit of the

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-13-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1995
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CS-09

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 WEST ALDER ST
MISSOULA MT 59802-4123
(406) 523-4755

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-13-95
BILL NO. SB-330 & 331

TESTIMONY CONCERNING SENATE BILL 331

February 13, 1995

Senate Natural Resources Committee
Senator Grosfield, Chairman
Montana Legislature
Helena MT 59620

Mr Chairman, members of the committee.

My name is Jim Carlson, Director of the Environmental Health Division, Missoula City-County Health Department.

I wish to oppose Senate Bill 331 for the following reasons:

Senate Bill 331 is a major restructuring of the State Clean Water Act.

-It weakens the criteria for public exposure to carcinogens to level much less stringent than most states.
-The changes in the definition of degradation would require a complete revision of the non-degradation rules, which are only a few months old, at considerable expense to the State of Montana.
-It would weaken the nitrate standard for non-degradation in groundwater at the drinking water standard. That means that it would be legal for a source to contaminate groundwater to the point that the Federal drinking water Standard would be violated. If that groundwater was used as a public drinking water supply, we would be required to shut down the drinking water supply due to violation of the public health standard.

The non-degradation requirements must serve to protect our groundwaters ad a viable source of drinking water. In Missoula groundwater is our sole source of drinking water.

It is our understanding that there are a number of amendments proposed for this bill. We have not seen these amendments. We would request that the committee rehear the bill after these amendments have been made incorporated to ensure that the public has the opportunity to comment and help fine tune the bill before it is passed on to the Senate.

In summary, we stand in opposition to this bill which weakens the State Clean Water Act as to prevent adequate protection of public resources and public health.

COLORADO NATURAL RESOURCES

EXHIBIT NO. 9

DATE 2-13-95

BILL NO SB-33 H.F. 1043

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To Chuck Stilwell	From Bill Shuttleworth
Co.	Co.
Dept.	Phone #
Fax #	Fax #

OCT 1 1993

OFFICE OF WATER

MEMORANDUM

SUBJECT: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria

FROM: Martha G. Prothro Martha G. Prothro
Acting Assistant Administrator for Water

TO: Water Management Division Directors
Environmental Services Division Directors
Regions I-X

Introduction

The implementation of metals criteria is complex due to the site-specific nature of metals toxicity. We have undertaken a number of activities to develop guidance in this area, notably the Interim Metals Guidance, published May 1992, and a public meeting of experts held in Annapolis, MD, in January 1993. This memorandum transmits Office of Water (OW) policy and guidance on the interpretation and implementation of aquatic life criteria for the management of metals and supplements my April 1, 1993, memorandum on the same subject. The issue covers a number of areas including the expression of aquatic life criteria; total maximum daily loads (TMDLs), permits, effluent monitoring, and compliance; and ambient monitoring. The memorandum covers each in turn. Attached to this policy memorandum are three guidance documents with additional technical details. They are: Guidance Document on Expression of Aquatic Life Criteria as Dissolved Criteria (Attachment #2), Guidance Document on Dynamic Modeling and Translators (Attachment #3), and Guidance Document on Monitoring (Attachment #4). These will be supplemented as additional data become available. (See the schedule in Attachment #1.)

Since metals toxicity is significantly affected by site-specific factors, it presents a number of programmatic challenges. Factors that must be considered in the management of metals in the aquatic environment include: toxicity specific to effluent chemistry; toxicity specific to ambient water chemistry; different patterns of toxicity for different metals; evolution of the state of the science of metals toxicity, fate, and transport; resource limitations for monitoring, analysis, implementation, and research functions; concerns regarding some of the analytical data currently on record due to possible sampling and analytical contamination; and lack of standardized protocols for clean and ultraclean metals analysis. The States have the key role in the risk management process of balancing these factors in the management of water programs. The site-specific nature of this issue could be perceived as requiring a permit-by-permit approach to implementation. However, we believe

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that this guidance can be effectively implemented on a broader level, across any waters with roughly the same physical and chemical characteristics, and recommend that we work with the States with that perspective in mind.

Expression of Aquatic Life Criteria

o Dissolved vs. Total Recoverable Metal

A major issue is whether, and how, to use dissolved metal concentrations ("dissolved metal") or total recoverable metal concentrations ("total recoverable metal") in setting State water quality standards. In the past, States have used both approaches when applying the same Environmental Protection Agency (EPA) criteria numbers. Some older criteria documents may have facilitated these different approaches to interpretation of the criteria because the documents were somewhat equivocal with regards to analytical methods. The May 1992 interim guidance continued the policy that either approach was acceptable.

It is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal. This conclusion regarding metals bioavailability is supported by a majority of the scientific community within and outside the Agency. One reason is that a primary mechanism for water column toxicity is adsorption at the gill surface which requires metals to be in the dissolved form.

The position that the dissolved metals approach is more accurate has been questioned because it neglects the possible toxicity of particulate metal. It is true that some studies have indicated that particulate metals appear to contribute to the toxicity of metals, perhaps because of factors such as desorption of metals at the gill surface, but these same studies indicate the toxicity of particulate metal is substantially less than that of dissolved metal.

Furthermore, any error incurred from excluding the contribution of particulate metal will generally be compensated by other factors which make criteria conservative. For example, metals in toxicity tests are added as simple salts to relatively clean water. Due to the likely presence of a significant concentration of metals binding agents in many discharges and ambient waters, metals in toxicity tests would generally be expected to be more bioavailabile than metals in discharges or in ambient waters.

If total recoverable metal is used for the purpose of water quality standards, compounding of factors due to the lower bioavailability of particulate metal and lower bioavailability of metals as they are discharged may result in a conservative water quality standard. The use of dissolved metal in water quality standards gives a more accurate result. However, the majority of the participants at the Annapolis meeting felt that total recoverable measurements in ambient water had some value, and that exceedences of criteria on a total recoverable basis were an indication that metal loadings could be a stress to the ecosystem, particularly in locations other than the water column.

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The reasons for the potential consideration of total recoverable measurements include risk management considerations not covered by evaluation of water column toxicity. The ambient water quality criteria are neither designed nor intended to protect sediments, or to prevent effects due to food webs containing sediment dwelling organisms. A risk manager, however, may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering that metals are very persistent chemicals. This conservative approach could include the use of total recoverable metal in water quality standards. However, since consideration of sediment impacts is not incorporated into the criteria methodology, the degree of conservatism inherent in the total recoverable approach is unknown. The uncertainty of metal impacts in sediments stem from the lack of sediment criteria and an imprecise understanding of the fate and transport of metals. EPA will continue to pursue research and other activities to close these knowledge gaps.

Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. (See the paragraph below and the attached guidance for technical details on developing dissolved criteria.) EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable as a matter of law.

o Dissolved Criteria

In the toxicity tests used to develop EPA metals criteria for aquatic life, some fraction of the metal is dissolved while some fraction is bound to particulate matter. The present criteria were developed using total recoverable metal measurements or measures expected to give equivalent results in toxicity tests, and are articulated as total recoverable. Therefore, in order to express the EPA criteria as dissolved, a total recoverable to dissolved correction factor must be used. Attachment #2 provides guidance for calculating EPA dissolved criteria from the published total recoverable criteria. The data expressed as percentage metal dissolved are presented as recommended values and ranges. However, the choice within ranges is a State risk management decision. We have recently supplemented the data for copper and are proceeding to further supplement the data for copper and other metals. As testing is completed, we will make this information available and this is expected to reduce the magnitude of the ranges for some of the conversion factors provided. We also strongly encourage the application of dissolved criteria across a watershed or waterbody, as technically sound and the best use of resources.

o Site-Specific Criteria Modifications

While the above methods will correct some site-specific factors affecting metals toxicity, further refinements are possible. EPA has issued guidance (Water Quality Standards Handbook, 1983; Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria, EPA-600/3-84-099, October 1984) for three site-specific criteria development methodologies: recalculation procedure, indicator species procedure (also known as the water-effect ratio (WER)) and resident species procedure. Only the first two of these have been widely used.

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In the National Toxics Rule (57 FR 60848, December 22, 1992), EPA identified the WER as an optional method for site-specific criteria development for certain metals. EPA committed in the NTR preamble to provide guidance on determining the WER. A draft of this guidance has been circulated to the States and Regions for review and comment. As justified by water characteristics and as recommended by the WER guidance, we strongly encourage the application of the WER across a watershed or waterbody as opposed to application on a discharger by discharger basis, as technically sound and an efficient use of resources.

In order to meet current needs, but allow for changes suggested by protocol users, EPA will issue the guidance as "interim." EPA will accept WERs developed using this guidance, as well as by using other scientifically defensible protocols. OW expects the interim WER guidance will be issued in the next two months.

Total Maximum Daily Loads (TMDLs) and National Pollutant Discharge Elimination System (NPDES) Permits

o Dynamic Water Quality Modeling

Although not specifically part of the reassessment of water quality criteria for metals, dynamic or probabilistic models are another useful tool for implementing water quality criteria, especially for those criteria protecting aquatic life. These models provide another way to incorporate site-specific data. The 1991 Technical Support Document for Water Quality-based Toxics Control (TSD) (EPA/505/2-90-001) describes dynamic, as well as static (steady-state) models. Dynamic models make the best use of the specified magnitude, duration, and frequency of water quality criteria and, therefore, provide a more accurate representation of the probability that a water quality standard exceedence will occur. In contrast, steady-state models make a number of simplifying, worst case assumptions which makes them less complex and less accurate than dynamic models.

Dynamic models have received increased attention over the last few years as a result of the widespread belief that steady-state modeling is over-conservative due to environmentally conservative dilution assumptions. This belief has led to the misconception that dynamic models will always lead to less stringent regulatory controls (e.g., NPDES effluent limits) than steady-state models, which is not true in every application of dynamic models. EPA considers dynamic models to be a more accurate approach to implementing water quality criteria and continues to recommend their use. Dynamic modeling does require commitment of resources to develop appropriate data. (See Attachment #3 and the TSD for details on the use of dynamic models.)

o Dissolved-Total Metal Translators

Expressing water quality criteria as the dissolved form of a metal poses a need to be able to translate from dissolved metal to total recoverable metal for TMDLs and NPDES permits. TMDLs for metals must be able to calculate: (1) dissolved metal in order to ascertain attainment of water quality standards, and (2) total recoverable metal in order to achieve mass balance necessary for permitting purposes.

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EPA's NPDES regulations require that limits of metals in permits be stated as total recoverable in most cases (see 40 CFR §122.45(c)) except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metals limit in another form (e.g., dissolved, valent, or total) when required to carry out provisions of the Clean Water Act. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent, and there is no assurance that effluent particulate metal would not dissolve after discharge. The NPDES rule does not require that State water quality standards be expressed as total recoverable; rather, the rule requires permit writers to translate between different metal forms in the calculation of the permit limit so that a total recoverable limit can be established. Both the TMDL and NPDES uses of water quality criteria require the ability to translate between dissolved metal and total recoverable metal. Attachment #3 provides methods for this translation.

Guidance on Monitoring

o Use of Clean Sampling and Analytical Techniques

In assessing waterbodies to determine the potential for toxicity problems due to metals, the quality of the data used is an important issue. Metals data are used to determine attainment status for water quality standards, discern trends in water quality, estimate background loads for TMDLs, calibrate fate and transport models, estimate effluent concentrations (including effluent variability), assess permit compliance, and conduct research. The quality of trace level metal data, especially below 1 ppb, may be compromised due to contamination of samples during collection, preparation, storage, and analysis. Depending on the level of metal present, the use of "clean" and "ultraclean" techniques for sampling and analysis may be critical to accurate data for implementation of aquatic life criteria for metals.

The magnitude of the contamination problem increases as the ambient and effluent metal concentration decreases and, therefore, problems are more likely in ambient measurements. "Clean" techniques refer to those requirements (or practices for sample collection and handling) necessary to produce reliable analytical data in the part per billion (ppb) range. "Ultraclean" techniques refer to those requirements or practices necessary to produce reliable analytical data in the part per trillion (ppt) range. Because typical concentrations of metals in surface waters and effluents vary from one metal to another, the effect of contamination on the quality of metals monitoring data varies appreciably.

We plan to develop protocols on the use of clean and ultra-clean techniques and are coordinating with the United States Geological Survey (USGS) on this project, because USGS has been doing work on these techniques for some time, especially the sampling procedures. We anticipate that our draft protocols for clean techniques will be available in late calendar year 1993. The development of comparable protocols for ultra-clean techniques is underway and will be available in 1995. In developing these protocols, we will consider the costs of these techniques and will give guidance as to the situations where their use is necessary. Appendix B to the WER guidance document provides some general guidance on the use of

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clean analytical techniques. (See Attachment #4.) We recommend that this guidance be used by States and Regions as an interim step, while the clean and ultra-clean protocols are being developed.

o Use of Historical Data

The concerns about metals sampling and analysis discussed above raise corresponding concerns about the validity of historical data. Data on effluent and ambient metal concentrations are collected by a variety of organizations including Federal agencies (e.g., EPA, USGS), State pollution control agencies and health departments, local government agencies, municipalities, industrial dischargers, researchers, and others. The data are collected for a variety of purposes as discussed above.

Concern about the reliability of the sample collection and analysis procedures is greatest where they have been used to monitor very low level metal concentrations. Specifically, studies have shown data sets with contamination problems during sample collection and laboratory analysis, that have resulted in inaccurate measurements. For example, in developing a TMDL for New York Harbor, some historical ambient data showed extensive metals problems in the harbor, while other historical ambient data showed only limited metals problems. Careful resampling and analysis in 1992/1993 showed the latter view was correct. The key to producing accurate data is appropriate quality assurance (QA) and quality control (QC) procedures. We believe that most historical data for metals, collected and analyzed with appropriate QA and QC at levels of 1 ppb or higher, are reliable. The data used in development of EPA criteria are also considered reliable, both because they meet the above test and because the toxicity test solutions are created by adding known amounts of metals.

With respect to effluent monitoring reported by an NPDES permittee, the permittee is responsible for collecting and reporting quality data on a Discharge Monitoring Report (DMR). Permitting authorities should continue to consider the information reported to be true, accurate, and complete as certified by the permittee. Where the permittee becomes aware of new information specific to the effluent discharge that questions the quality of previously submitted DMR data, the permittee must promptly submit that information to the permitting authority. The permitting authority will consider all information submitted by the permittee in determining appropriate enforcement responses to monitoring/reporting and effluent violations. (See Attachment #4 for additional details.)

Summary

The management of metals in the aquatic environment is complex. The science supporting our technical and regulatory programs is [illegible] in all areas. The policy and guidance outlined above represent the position of OW and should be incorporated into ongoing program operations. We do not expect that ongoing operations would be delayed or deferred because of this guidance.

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If you have questions concerning this guidance, please contact Jim Hanlon, Acting Director, Office of Science and Technology, at 202-260-5400. If you have questions on specific details of the guidance, please contact the appropriate OW Branch Chief. The Branch Chiefs responsible for the various areas of the water quality program are: Bob April (202-260-6377, water quality criteria), Elizabeth Fellows (202-260-7046, monitoring and data issues), Russ Kinerson (202-260-1330, modeling and translators), Don Brady (202-260-7074, Total Maximum Daily Loads), Sheila Frace (202-260-9537, permits), Dave Sabock (202-260-1315, water quality standards), Bill Telliard (202-260-7134, analytical methods) and Dave Lyons (202-260-8310, enforcement).

Attachments

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2-13-95
BILL NO. SB-331

RESIDUAL COPPER AND ZINC CONCENTRATIONS IN SILVER BOW CREEK FOR EE/CA RESPONSE ALTERNATIVES

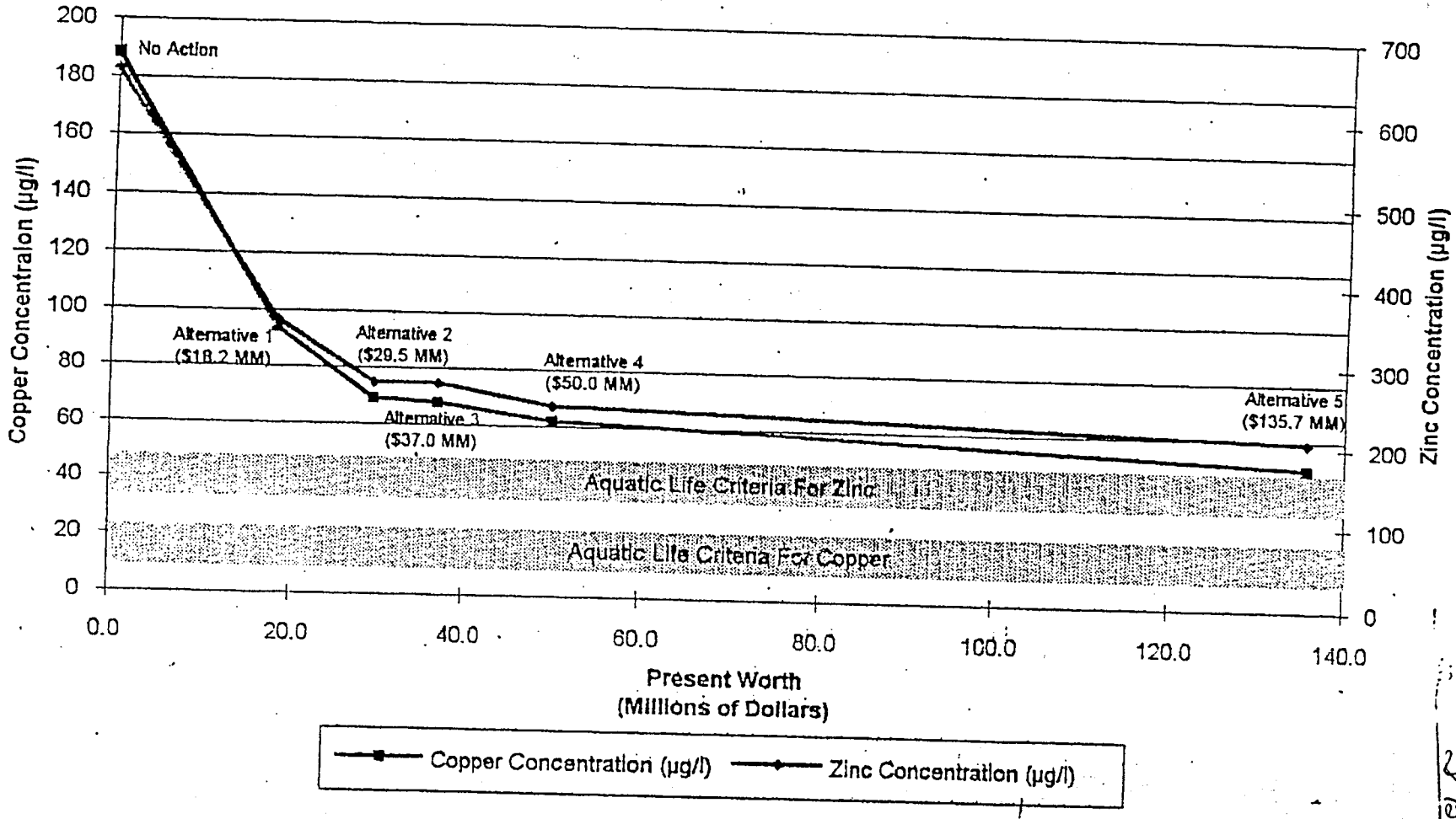

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EXHIBIT NO. 10
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...E NATURAL RESOURCES
...IT NO. 11
DATE 2-12-95
BILL NO SB-331

ARSENIC WATER QUALITY STANDARDS

CURRENT MONTANA & EPA DRINKING WATER STANDARD	0.05 ppm
CHRONIC AQUATIC VALUE TO PROTECT FISH & AQUATIC LIFE	0.19 ppm
CURRENT MONTANA HUMAN HEALTH STANDARD	0.000018 ppm
PROPOSED 10^3 HEALTH RISK BASED STANDARD	0.02 ppm
AVERAGE ARSENIC 1992 MISSOURI RIVER AT TOSTON	0.024 ppm

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-13-95
BILL NO. SB-331

ERA® PROPERTY STORE

SENATOR LARRY J. TVEIT
NATURAL RESOURCES DEPT.
HELENA, MT

I URGE YOU TO VOTE IN FAVOR OF SENATE BILL 331.

THANK YOU.

PAM WILLETT
BROKER/OWNER

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-13-95
BILL NO. SB-331

TO: SENATORS
LARRY TVEIT
LORENTS GROSFIELD
VIVIAN BROOKE

RE: SENATE BILL 331

PLEASE SUPPORT SB 331! RECENT LEGISLATION HAS MADE IT ALMOST IMPOSSIBLE TO INSTALL A SEPTIC SYSTEM IN MUCH OF RURAL MT. A MAJOR BLOW TO AFFORDABLE HOUSING AND OUR RURAL RESIDENTS IN GENERAL!

WE SHOULD NOT HOLD RURAL TAXPAYERS TO STANDARDS WHICH ARE HIGHER THAN THOSE OF RESIDENTS ON MUNICIPAL SEWER SYSTEMS. LET'S BE FAIR.

DAVID M. BAILEY HM # 755 3965

SJR 330 / SB 331 SENATE NATURAL RESOURCES 2/12/95 (1)

EXHIBIT NO. 14
DATE 2-13-95
BILL NO SB-331

By way of introduction, my name is Dave Gano, I'm a blacksmith, and raise bees ~~& cattle~~ with my family. We live on Tony Crik, east of Melville, in Sweet Grass county and I am not a political activist. I am currently serving as Vice-chair of Cottonwood Resource Council, which is one of several political action groups in Sweet Grass County. How a non-politic activist is currently Vice-chair of a citizen's action group is kind of a funny story which I won't go into. I attend meetings, I write letters, read newsletters, study draft legislation, make phone calls, and occasionally travel to Helena to try to make a voice for what I believe in. The reason I'm not a political activist is because I have no faith in politics — less so, now, than I did when I first became involved with CRC and really began tryi to educate myself, politically. Personally, I'm convinced that the only real hope we have for ourselves and Creation is Spiritual, and just as soo as I get my own unruly self into line, the rest o you might hear more from me on the subject, but, judging by my current progress, I won't be in a position to preach to anyone in this lifetime. Al the same, Spirit is the reason I'm here — or, rather there - or, actually.... not there. The reason I'm no there is because I'm calving (not me, but our cows you understand). The reason I'm involving myself i this process (against my preference and my nature), the reason I look like a political activist when I'm not, the reason I am sometimes mistaken for the blankety blank environmentalist that everybody is afraid of and the reason I'm submitting this t

In exchange for the gift of [illegible] I am obligated to show the utmost respect for Her Creati and to do my best to love and care for [illegible] to b a Good Steward, to be a Good Husbandman. I d always want to do it, and often when I try, I dissapoint myself, but I don't really have a choi I have to keep trying.

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EXHIBIT NO. 14
DATE 2-19-95
BILL NO. SB-331

Technology and the Law are not my gods. I ob the law (almost always), and I respect technology, b they are both very limited systems in the over all sc of things. Technology, like Statistics, can be ma to argue any point of view, and is often called upon to argue opposing points of view! And, as the Law.... having personally made repeated and determined assaults on stacks of legal documents I am convinced that Legal Language is the provin of a tribe of demons, related directly to the bun behind the Infernal Revenue Service, who work i the dark hours to cast Stupefying Spells to discou anyone who hasn't been initiated from peering into their Domain!

You all must work within that realm. That prompts my admiration and, at the same time, arouses my suspicions! While you may be comfortable with the Law, you may understand "Legaleeze", you may even love it, I suggest tha the Law's purpose is to serve Life, and not the other way around. That's why my voice is as va as legal or technological testimony.... Because real issue is always one of Balance — critical, and maybe impossible to maintain.

Water is out of balance. We've taken it so

STATE NATURAL RESOURCES
EXHIBIT NO. 4, ATTACHMENT
DATE 2-18-95
BILL NO. SB 331

that it's no surprise that our neighbors are catching up with us. Those of us fortunate enough to live in Montana are luckier than most of us in this country. We still have relatively good water, but that's no reason for complacency. This is not a time to take further liberties. We are obligated, as good stewards, to safeguard what we are blessed with, and if that means all of us, I guess we better start doing what it's going to take.

Ranchers are notoriously independent, as a group - which we aren't, because we can never agree on anything, and we don't like crowds! We live and work alone, alot, and are regularly confronted by situations that nobody else can, or will, deal with. The life fosters and encourages independence so we don't even like the <u>notion</u> of somebody else telling us what we can or can't, should or shouldn't do - not the blankety-blank bureaucrats and not the blankety blank environmentalists, either but if we are all part of the problem, then we all have to be part of the solution, or there will be no solution. Ultimately, it is in our own best interest.

I have never met a person who I thought was who claimed that quality for his or her self. Anyone who tells me he is wise has just disqualified himself, in my book. If he was really wise, he'd be wise enough to keep his mouth shut about it. So the self-proclaimed wise reveal themselves to me as fools. Intelligent? Probably. Brilliant? Possibly. But I don't think so - just another fool, and fools I

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EXHIBIT NO. 17
DATE 2-13-90
BILL NO. SB 371

I can remember. That's why I don't argue facts, figures, and logic. The truth about that stuff is that it's just what we use to try to make our own point of view look real. But, more than that, I can't keep track of things like that - I just don't work that way! So, if my testimony seems foolish to you, that may be entirely apropriate. At least I've said my say and I thank you for the opportunity. In closing, I'll leave you with the question of what you think is more straight forward a load of horse manure that admits it came from a horse, or a load of manure that presumes itself to be wise!

Dave Cuna
Melville, MT

SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 2-13-95
BILL NO. SB-331

Senate Natural Resources Committee
Monday, February 13, 1995
Testimony on Senate Bill 331
Glenn Marx, Policy Director, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

As you've heard from some of the proponents of this bill, during the last two weeks the sponsor of the SB 331, mining industry representatives and management and staff at the Department of Health and Environmental Sciences have been meeting in an attempt to reach technical and procedural agreements regarding the contents of this bill.

Those discussions have been largely successful, and the governor offers his sincere appreciation to the sponsors of this bill and the department for the "good faith" cooperative approach on this bill. Had the industry decided to rush forward with its absolute legislative wish list, it would have touched off the kind of useless and wasteful environmental emotional holy war that nobody wins. The lengthy discussions between industry and the department were productive in that, from the State's standpoint at least, such a war is not necessary. But it appears we can't get by without at least a factual skirmish.

It is also worth pointing out the original version of this bill would have probably resulted in the loss of water quality primacy for the state. This new version of the bill abolishes that aspect of discussion and allows us to scale the debate back to what I'm sure will be a stimulating discussion focused in part on risk assessment.

Yes, risk assessment is one key area of disagreement. But this is a legitimate area of dispute, an area which merits a public policy focus, and therefore an area which deserves serious legislative examination. The Governor respects the position of industry in seeking to retain and expand job opportunities in Montana, and respects the department obligation of environmental regulation to protect public health and aquatic life. Neither focus, of course, is exclusive. Industry does demonstrate environmental stewardship, and the department does recognize that people must live and work in this state, and that the actions of people impact water quality.

The department will follow me and offer specific language for a handful of amendments which address the State's concerns. As an introduction to those amendments, and as a framework for policy discussion of two critical areas, let me provide some background information on the Governor's approach to this bill and water quality protection.

The State of Montana has a legal and constitutional obligation to protect public health. Every comment made by me the department

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must be filtered through that obligatory screen. And not only does that public health screen determine regulatory actions here and now, but it must also provide a baseline of protection for environmental consequences unknown or uncertain now, and only felt in the near or distant future. That regulatory baseline can be described in one word: prevention.

This emphasis on prevention serves as the basis for two key policy amendments to SB 331. These amendments center on Section 2 of the bill, and relate to one, the publicly-accepted public health risk for cancer-causing agents...and two, a procedurally-sound way to measure metals in streams. Prevention and caution, constrained by real-world realities, form the basis of virtually every amendment the State proposes.

Right now in Montana, the acceptable risk of contracting cancer through water-borne pollutants is one in one-million. That standard is set in both law and rule. This bill proposes to change that risk threshhold to one in ten-thousand for all cancer-causing agents except arsenic, which would be one in one-thousand.

Montana, like most western states, has a high rate of natural aresnic and Montana's policies must reflect that natural aresnic rate. Yet standards should be, must be, and will be, set. And because of the State's fundamental obligation of true health risk prevention, we propose to modify both the existing legal standards and the proposed changed standards suggested in this bill. From a scientific and public health standpoint, the State believes it is safe to lower the cancer-causing agent threshhold from one in one-million to one in one hundred thousand. That figure should be compared to your risk of dying in a car wreck, which is one in sixty-five. Roughly half the states in the nation have adopted the one in one hundred thousand cancer risk level from water-borne pollutants.

Aresnic presents a separate challenge, and is a separate issue. The state believes public health would still be protected by lowering the aresnic threshhold to one in one thousand. Thus, in this case, we concur with the sponsor's amendments.

Agreeing to lower a standard is not an easy decision to make. Keep in mind this new rate would be set at about 18 parts per billion, which is detectable and is approximately the naturally occurring rate of aresnic in Montana. The drinking water standard for aresnic is 50 parts per billion, which means the proposed level of 18 parts per billion is more than twice as stringent as the drinking water standard.

The State does not believe we in any way compromise public health by proposing this risk threshhold. And we reserve the right to aggressively move to modify this established risk threshhold with the advent of any new available scientific information.

It should be pointed out that establishing a risk threshhold

is not nearly as tidy, nor precise, as convicting a criminal. Science is continually evolving, technology is constantly improving, and new debates are perpetually stirred. Acceptable risk levels of cancer-causing agents is invariably not a sheer scientific decision nor a strictly government decision but is in fact a public policy decision based upon public's tolerance for -- and acceptance of -- risk. It is appropriate that the Legislature, as representatives of the people of Montana, make a public policy decision -- with full public comment -- based upon the best information available. In fact, this is the exact public process EPA wants states to follow in establishing risk levels. The DHES will assist you in any way possible, and the State has provided a risk recommendation based upon what we see through the filter of public health protection.

The second serious policy issue in the bill is the question of what process is used to count impurities in the water. Should the state measure only dissolved metals in the water or should the state measure the total recoverable metals?

The State believes measurement should be consistent and expansive to make sure we quantify actual parameters of everything we can, in fact, quantify. That is, it seems to us, the only true test of actual water quality. When you are on a diet, you have to count every calorie, because every calorie contributes to weight gain. When you protect water, you have to count every impurity, because every impurity contributes to water degradation. I'm sure the department will have a more scientific example of why the State proposes an amendment to this aspect of SB 331. But simply put, water quality protection should be inclusive, not exclusive.

Mr. Chairman, while the State stands as an opponent to this bill, it does so recognizing the tremendous amount of work by the sponsor and the department which preceded this hearing. We also recognize there are only a couple significant areas of policy dispute and a few other procedural disputes embodied in the bill. But the basic obligation to protect public health and err on the side of prevention compels the State to take this posture. Should the department's amendments be adopted, the State would be in support this bill.

Thank you for the opportunity to testify.

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-13-95
BILL NO SB-331

SENATE BILL 331

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences appears before you today in opposition to SB 331 in the introduced form. Let me begin by recognizing the substantive amendments being offered by the sponsor. The water quality division has been working with industry representatives on these proposed amendments for some time and we appreciate the opportunity to discuss and resolve many of the concerns and issues of the bill. Mr. Marx, on behalf of Governor Racicot has provided an excellent summary of our position on the bill and I would like to follow with more technically based testimony on several provisions of the bill.

Section 1 seeks to restrict the ability of the board to adopt standards which are more stringent than federal standards by requiring significant findings and justification. I would point out that our standards are based on federal guidelines and are submitted to and approved by the Federal Environmental Protection Agency with the important exception of ground water standards. There are no federal guidelines or standards for ground water. This provision would limit our ability to adopt technology based treatment requirements when EPA has failed to do so.

Section 2 proposes water quality standards that would not meet federal guidance and would not be approved by EPA. If these standards are approved, EPA would move to adopt our current standards creating a duplicate standard system. They would also likely terminate our delegation agreement for the issuance of waste discharge permits under Federal law resulting in the need for two permits for each facility discharging wastes to state waters.

The proposed amendments would delete this section to eliminate the risks of federal assumption of these programs but would incorporate, in a different section, legislatively mandated risk levels for human carcinogens. The proposed levels are one excess case of cancer per 10,000 (10-4) people for all carcinogens except arsenic where the risk level would be one excess case per 1,000 people (or 10-6) or about 18 parts per billion. The arsenic limit for drinking water is 50 parts per billion or a risk level of about one excess case per 750 people.

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-13-95
BILL NO. SB-331

The risk level in our present standards is one excess case per million people (10-6) and is the risk level adopted by about one half of the states. The remaining states have adopted a risk level of one in one hundred thousand people (10-5). For comparative purposes the risk of death due to; a motor vehicle accident is 1 in 65, falls 1 in 186, and for home accidents it is 1 in 130 people.

Section 2 also contains a requirement that standards for metals be based on the dissolved method of analyses. Although use of the dissolved method of analyses for standards has been approved in some states we must oppose this change for the following reasons:

- all of our current standards were developed using total recoverable methods of analyses.

- Although the EPA will accept standards based on the dissolved method of analyses EPA requires that discharge limits for permits be based on the total recoverable method of analyses. Thus, instream compliance monitoring would require both types of analyses.

- The dissolved method of analysis requires filtering the samples in the field. Such filtering is very difficult in freezing weather and is much more expensive and prone to error than is the total recoverable method.

- The dissolved method of analyses does not measure all of the pollutants present. We would like to provide a quick demonstration that illustrates our concern.

- Most of the water quality data that exists in the data files is based on the total recoverable method and this data will not be comparable to new data based on the dissolved method.

Section 3 provides that the board shall adopt site specific standards. While this is a good concept, we are concerned that site specific standards reflect the impact of all routes of exposure to contaminants. There are cases where significant toxicity may be caused by fish ingesting contaminated sediment or bugs.

Section 4 proposes to modify a number of definitions. The proposed change in the definition of "Degradation" would require a complete revision of the nondegradation rules.

The proposed amendments to this definition will require relatively minor changes to the rules.

The proposed changes in the definitions of "Industrial" and "Other wastes" would remove the permitting requirements for these structures.

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-13-95
BILL NO. SB-331

The proposed amendments delete these changes.

The proposed change to the definition of "State Waters" is not compatible with the fact that all waters belong to all of the people and that these waters deserve protection under the provisions of the water quality act.

The proposed amendments provide that ponds or lagoons used solely for treating, transporting or impounding pollutants are not state waters and is acceptable to the Department.

Section 5 requires coordination of our permitting process with that of other state agencies. While we now attempt to coordinate those functions, we welcome the specific legislative directive.

Section 7 directs us to establish a classification for intermittent or ephemeral streams and we agree with this need. The proposed amendment would be of value to the Department. We are, however, concerned with the proposed changes to 75-5-301(2) which require that standards be "cost-effective and economically and technologically feasible". While this condition is appropriate for establishment of treatment standards, it is inappropriate for water quality standards. Water quality standards must be set at levels that are protective of the beneficial uses. The language as proposed would result in federal promulgation of standards for Montana.

The proposed amendments would delete this change.

The proposed changes requiring that nitrate concentrations in ground water of less than 10 milligrams per liter be nonsignificant would completely negate the nondegradation concept for ground water and would significantly reduce the protection of the ground water.

The proposed amendments would result in considerable protection for ground water and would significantly reduce the burdens on the department and the regulated public.

Section 8 requires all known misclassified waters be reclassified in a timely manner. Due to the list of known misclassified streams, this effort would require significant additional resources.

The proposed amendments would provide the Department with more flexibility and reduce the resource demand.

Section 11 proposes changes to the definition of "natural" in 75-5-306 would conflict with common sense and federal requirements in that it would provide that the conditions of waters which were receiving raw sewage in 1971 would be considered natural.

The proposed amendments delete this change.

Section 13 establishes a new requirement that all permits be reviewed for completeness within 30 days and that the first review must include all issues. While it is appropriate to demand reasonable and timely response to submittals, the current language is not practical. Complying with this requirement would require additional resources beyond what we have requested through the budget process.

The proposed amendments extend this time to 60 days and applies to only new permits, and somewhat limits the requirement that the first review include all issues.

Section 15 modifies the current provisions for holding a contested case hearing and would require that a contested case be held in the county of the violation unless the alleged violator wanted the case to be heard in Lewis and Clark County. This change would require extensive board travel and increased expense.

The proposed amendments remove this requirement.

Section 16 includes a proposed requirement that civil actions take place in the count of the violation. Such a limitation will increase staff travel and per diem expenses.

No amendment has been proposed to address our concern.

Hopefully my comments have pointed our clearly the effort that has gone into our discussions with industry on this bill. While a couple of areas of disagreement still exist, we have made substantial progress on this bill and we ask for your support of the amendments that have been offered and of those offered by the Department.

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 330, SB 331, SB 362, SB 371, SB 346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Deborah Smith	Sierra Club	all, [illegible] qualified 371		346, 330, 331, 362
Richard Parks	NPRC	all		
Allan Rollo	MWF	All	(371)	✓
Jim Barrett	Beaverhead Alliance			✓
DONALD KERN	SELF	ALL		X
Joe Gutkoski Pres.	Madison Gallatin Alliance	All		✓
MIKE MURPHY	MT. WATER RES. ASSN	330 331 362 371	✓	
Scott McMillion	Bozeman Chronicle	all		
Lorna Frank	MT. Farm Bureau	all	✓	
[illegible]	SELF	ALL		
CANDACE TOLGERSON	MT. Cattlewomen	ALL	X	
Raymond Lazuk	Golden Sunlight Mine	All	X	
[illegible]	NPRC	346	X	
Alan Joscelyn	Golden Sunlight Mines	330 & 331	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/13

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 330-331 362
346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Doug Parker	Crown Butte Mines	330 331	X	
Bob Wallace	Mt Mine Assn	330-331	✓	
Hope Stevens	Citizen	330-331		X
Laurie Cano	Citizen	346 330-331	✓	✓
Florence Ore	NPRC	330, 331		X
Steve Pilcher	DHES	330-331		X
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSN OF MONTANA	330-331		X
GAIL ABERCROMBIE	MT Petroleum Assn	331 362	X	
Larry Brown	Ag Pres. Assn 371	331 346 330 362	X	
DENNIS IVERSON	NMDGA	362	✓	
Don Allen	MT Wood Products Assn	331 362	✓	
Peggy Trenk	WETA	371	✓	
Russ Ritter	MT Resources	331 362	✓	
John Bloomquist	Mt. Stockgrowers	330, 331, 362, 371	✓	

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DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 330, SB 331, SB-362
SB 346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Nick Golder	NPRC	SB 330 SB 331		✓
GARY FORRESTER	SD #8	346	✓	
COLLIN BANGS	REACTORS	331		
Jim MacMillan	MT. Coal Council	SB 330 SB 331	✓	
Tamara J. Johnson	CURE	SB 330 SB 331	✓ —	
Al Kingston	Self	SB 330 331	✓	
Joe Cossi	SELF	SB 330 331	✓	
Bruce Farling	Montana Trout Unlimited	SB 330 SB 331		✓
Willa Hall	LWV	SB 330 SB 331		✓
R F LABBE	City of DEER Lodge	SB 331	✓	
[illegible]	[illegible]	SB 330 SB 331	—	
WANDY WASH	ARCO	SB 330 SB 331	✓	
[illegible]	[illegible]	SB 330 SB 331	✓	
Susan Cullaghan	Montana Power	SB 330 SB 331	X	

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DATE 2/13/95

SENATE COMMITTEE ON Nat. Resources

BILLS BEING HEARD TODAY: 330, ~~331~~, 362, 331
SB 346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
MARSHALL PRICE	ENTERPRISE RENT-A-CAR			
Robert Ward	Enterprise Rent-a-Car			
JACK MORGENSTERN	MT CONTR ASSOC			
CURT LANCE	HELENA CHRYSLER-NISSAN			
MARY DYE	MDT			
Ken Knapp	MRAN			
Dick Juntunen	Santa Fe Pacific Gold.		346, 330 331, 362 371	
Hope Stevens				
Ron A Andersen				
JOHN A. KRUTAR				X
Brian Kuehl	Greater Yellowstone Coal.			X
[illegible]	MMCC 371	330, 331 362, 346		X
[illegible]	SELF			X
Andrea Stander	NPRC			X

VISITOR REGISTER

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DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 320, SB 331, SB-362
SB-346

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Youngberg	MT Farm Bureau	362 372	X	
Janet Ellis	MT Audubon	362 346		X
Brian Kuehl	Greater Yellowstone Coal.			X
JOHN ARRIGO	DHES	SB362	X	
John Fitzpatrick	Pegasus Gold	SB362 SB371 ~~SB310~~ SB331	X	

VISITOR REGISTER

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REGISTER.F10

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB-330, SB 331, SB 362
SB 376

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Russ Ritter	MT Resources	330 331	X	
John Youngberg	Montana Farm Bureau	330 331	X	
Chris Tweeten	MT Dept of Justice	331		X
Melissa Tuemmler, R.S.	Broadwater County Jefferson County	330 331	X	
Larry Brown	Ag. Pres. Assoc.	330 346 331	X	
Bob Robinson	DNRS	330 + 331		X
Janet Ellis	MT Audubon	330 > 331		X
Peggy Trenk	WETA	330 + 331	X	

VISITOR REGISTER

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REGISTER.F10

Vote: SEGREGATED MOTION TO ADOPT FROM AMENDMENT NO. sb033002.amk, AMENDMENT NO. 1, FAILED 6-5 ON A ROLL CALL VOTE.

Motion/Vote: SEN. FOSTER MOVED TO DO PASS SB 330 AS AMENDED. MOTION CARRIED 8-3 ON A ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 331

Motion: SEN. FOSTER MOVED TO DO PASS SB 331.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb033102.amk AS CONTAINED IN EXHIBIT 17.

Discussion: Mr. Kakuk said he would try to explain the main intention of the amendments. He said that these amendments were requested by **SEN. BECK**, and that the Discussion Draft, prepared by staff at the committee's request, **EXHIBIT 17 DD**, included these amendments and was nearly accurate. There was one change needed with respect to Amendment No. 4 where it says: "and providing an effective date"; that should be changed to: "and providing an immediate effective date." Another error was on Page 13, Lines 7-13 of the Discussion Draft where Items (i), (ii), and (iii) should be stricken and replaced with Amendment No. 22, items (i), (ii), (iii), and (iv). Those amendment items were developed by representatives from the mining industry and the DHES. **Mr. Kakuk** reviewed the rest of the amendments with the committee members.

SEN. KEATING asked **Mr. Pilcher** what the difference was between 7.5 milligrams per liter for waste discharge and 5.0 milligrams per liter. He responded that the department rules had stated that conventional septic systems were okay, but once they reached half the standards it meant they were 50% away from the drinking water standards already. They would therefore be required to go to Level 2 treatment which was much more expensive, but would take out those nitrates. The level of nitrates would generally be going up because they would be mixing in with background nitrates already in the groundwater.

SEN. KEATING asked if the mixing zone goes to the edge of the property. **Mr. Pilcher** replied that currently there was a bill being considered addressing that, and if it passes, the mixing zone would go to the edge of the property. If sewage is discharged and it goes above 5.0, the discharge will be significant and the applicant will have to go through nondegradation review.

{Tape: 3; Side: B}

CHAIR. GROSFIELD asked **Mr. Horpestad** what was going on with the federal rules, as described on the top of page 15 of the Discussion Draft, and how that relates to nonsignificance under

nondegradation. He answered that the language that was added reflects the fact that under federal law the treatment requirements must be imposed in order for Montana to receive primacy for the permit program. The second part of that says that to the extent the federal government has not adopted minimum treatment standards, the board can adopt them, if they go through the rule-making process and determine that they are economically, technologically and environmentally feasible." It also says if it is nonsignificant under the nondegradation rules, the department cannot require minimum treatment, except where required by the federal requirements.

CHAIR. GROSFIELD asked **Mr. Horpestad** to explain Section 9, Subsection (b) on page 16 of the Discussion Draft, and the proposed changes beginning on Lines 21-23. He responded that the first change to subsection (b) in the bill (Lines 18-20 of the Discussion Draft) meant that a natural spring does not contain industrial waste, and a permit cannot be required for it. The language on Lines 21-23 was stricken because it left the department in an awkward position because that groundwater would have to be monitored to see if it contained industrial waste such that it could require a permit. The new language beginning after Line 23 says that if you are pumping groundwater and discharging it to surface water, it cannot cause the surface water to violate standards.

SEN. BROOKE said the bill in this subsection (b) says essentially that a groundwater discharge to surface water does not require a permit. She asked **Mr. Horpestad** to further comment on that. He said the problem with that provision was that there are areas in the state where the groundwater is of lower quality than the surface water. The original language of the bill says that they cannot require a permit for discharging that groundwater to surface water. The revised language in the Discussion Draft does not prevent them from determining that the discharge constitutes a significant alteration to the surface water, and therefore could require a permit.

{Comments: there was so much background noise it was difficult to hear.}

SEN. BROOKE said in Missoula the aquifer was under the septic tanks. She asked what that did with respect to the current standards. Would the bill as proposed to be amended be more threatening to the aquifer? **Mr. Horpestad** replied that the proposed amendments raise the nondegradation significance lever for good quality groundwater from the current 2.5 parts per million to 5 parts per million. **SEN. BROOKE** said with all the building in Missoula and more and more septic tanks, it would seem that this would cause more and more degradation to the aquifer. **Mr. Horpestad** said the bill would require alternate water supplies or alternate treatment systems to keep the groundwater at the same level.

Mr. Horpestad said if you start out with zero nitrates in the groundwater, and it is then allowed to go to 10 parts per million of nitrate from human sewage, that means if you drink that groundwater, essentially you are drinking 20% recycled sewage, and there may be other things present besides nitrates.

SEN. CHRISTIAENS asked how that would affect the pricing of housing. If there was already a high level of nitrates in the land, what does it cost to go from one level of treatment to another? **Mr. Horpestad** said that secondary treatment would require biological treatment which converts the nitrates to nitrogen gas. That is usually done with a sand filter or a small treatment plant. He estimated that would cost from $2,500 to $7,000 additional per housing unit.

SEN. CHRISTIAENS asked if he could install a septic tank himself. **Mr. Horpestad** replied that he would have to hire a contractor to do that.

SEN. WELDON said he had 3 specific concerns with the bill: 1) the changes in arsenic levels, 2) what happened to the measurement method, and 3) the savings clause. In the savings clause it says: "Section 75-5-614 does not affect proceedings that were begun before (the effective date of this act)." He asked what that meant. **Mr. Pilcher** said that language was put in the bill at the request of the DHES to deal with litigation that was currently in district court relative to violations that took place elsewhere in Montana. They wanted to make sure that the change would not alter those ongoing cases.

Mr. Pilcher said that with respect to the measurement method, it was their understanding that it would be necessary for the committee to act on the original amendments, and then amendments to the amendments would be provided to the committee members to address dissolved vs. total recoverable, and the risk levels that were acceptable to the department.

CHAIR. GROSFIELD said they would have to vote on the first set of amendments before they could change the amendments. He asked if it was correct to say that the amendments to the amendments were much closer to what the department feels comfortable with, with respect to the measurement method. **Mr. Pilcher** said that was correct.

SEN. BROOKE said the memo from the Department of Justice voiced their concern about the total recoverable versus the dissolved measurement methods. **Mr. Kakuk** said the staff's interpretation was that the proposed amendments had just taken the language that caused concern by the DHES and moved it from stricken section 2 into the section where it is now. They move it but have not altered it. The amendments to the amendments, if accepted by the committee, will alter it.

SEN. BROOKE said that on Page 5 of the Discussion Draft, Lines 3-4 where it says: "...permittee, or person potentially liable under any state or federal environmental remediation statute,...", the Department of Justice has serious concern about that. She asked why the site-specific standards were left in the bill. **Mr. Kakuk** said they were concerned about other routes of exposure, and an additional amendment that will be presented to the committee has been prepared to address that. He said that will be Amendment No. SB033103.amk.

Vote: **MOTION TO ADOPT AMENDMENT NO. sb033102.amk, CARRIED WITH SEN. BROOKE VOTING NO.**

CHAIR. GROSFIELD asked **Mr. Pilcher** to explain the amendments to the amendments called "Concept amendments to SB 331 as amended by **SEN. BECK** (SB033102.amk), which were from the DHES as contained in **EXHIBIT 18.** **Mr. Pilcher** reviewed the amendments with the committee.

Motion: **SEN. WELDON MOVED TO APPROVE THE CONCEPT AMENDMENTS AS CONTAINED IN EXHIBIT 18.**

SEN. TVEIT asked **Sandy Stash, ARCO,** if she would comment on the amendments. **Ms. Stash** said she did not see a real issue with the amdendments to **BECK** Amendment 10 and to **BECK** Amendment 33. The amendment to **BECK** Amendment 21 gets to the heart of dissolved vs. total recoverable and would not be acceptable.

SEN. BECK, Sponsor of SB 331, said he would like to reject the amendment to **BECK** Amendment 10 because that was already in SB 330. On the Amendment to **BECK** Amendment 21, when it comes to the carcinogen rates, he would support that. He said he did not agree with the section of the amendment that takes "(c) for all metal parameters,...", etc., out of the bill. With respect to the amendments to **BECK** Amendment 33, he asked why the department had added: ..."and the department has the opportunity to participate in the review of the activity."

Mr. Pilcher said they were only attempting to recognize that some of the other agencies that have that decision-making responsibility may not have the same level of technical expertise on all the issues that the DHES could offer.

CHAIR. GROSFIELD asked **Mr. Pilcher** regarding the amendment to **BECK** Amendment 21 what the significance of striking subsection (a) was. He responded it was intended to eliminate the maximum contaminant levels for groundwater.

Motion: **SEN. WELDON WITHDREW HIS MOTION TO APPROVE ALL THE CONCEPT AMENDMENTS AND MOVED TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 10.**

SEN. BROOKE asked why the language wasn't the same as in SB 330. **Mr. Horpestad** said the problem with the language in Amendment 10

is that it was unclear the way it was written. Does it say "the parameter likely to be affected", or does it mean "level likely to be affected?" If it means "level", that is approaching standards and it goes beyond the concept of nondegradation. The proposed change that they suggest would be: " the parameters likely to be affected by the activity" and the nonsignificance section in the law would be used to determine if that would result in a significant change.

SEN. TVEIT said the problem seems to be that the proposed language in the amendment to **BECK** Amendment 10 is not the same as in SB 330, is that right? **CHAIR. GROSFIELD** said if the language was different that would have to be rectified. The proposed language was contrary to language in SB 330.

SEN. KEATING said he didn't see where the language in one bill was contrary to the language in the other bill. It was just approached from a different angle. The language in SB 330 deals with improving the quality and the amendment to **BECK** Amendment 10 says: "...a parameter likely to be affected..." Those aren't different ideas.

SEN. FOSTER said he would oppose that amendment because the language they wanted was adopted in SB 330, and they should be consistent.

Vote: MOTION TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 10 FAILED WITH SEN. BROOKE, SEN. CHRISTIAENS, AND SEN. WELDON VOTING YES.

Motion/Vote: SEN. WELDON MOVED TO STRIKE SUBSECTION (a) IN BECK AMENDMENT 21. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WELDON MOVED TO ADOPT THE LANGUAGE IN THE CONCEPT AMENDMENTS TO BECK AMENDMENT 21 IN THE SUBSECTIONS WHERE (b) AND (d) WERE STRUCK. MOTION CARRIED UNANIMOUSLY.

Motion: SEN. WELDON MOVED TO STRIKE SUBSECTION (c) IN BECK AMENDMENT 21.

Mr. Horpestad reviewed dissolved vs. total recoverable as he previously stated.

Vote: MOTION TO STRIKE SUBSECTION (c) FROM BECK AMENDMENT 21, FAILED ON A ROLL CALL VOTE OF 6-5.

Motion/Vote: SEN. WELDON MOVED TO ADOPT THE NEW SUBSECTION (c) IN THE CONCEPT AMENDMENTS TO BECK AMENDMENT 21. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WELDON MOVED TO ADOPT THE CONCEPT AMENDMENT TO BECK AMENDMENT 33. MOTION CARRIED WITH SEN. CRISMORE VOTING NO.

Motion: SEN. CHRISTIAENS MOVED TO ADOPT AMENDMENTS NO. sb033103.amk AS CONTAINED IN EXHIBIT 19.

Mr. Pilcher explained the amendments to the committee members.

SEN. TVEIT asked why "shall" was struck and replaced by "may" in amendment no. 1. **Mr. Pilcher** replied that was a decision that the board made and this amendment gives them the flexibility to consider and decide on a case-by-case basis the appropriateness of replacing surface water quality standards with site specific standards. The intent was to allow the board to consider the information that would be submitted in response to the guidance made available to an applicant.

SEN. TVEIT asked **Mr. Pilcher** to explain, "...other routes of exposure" in amendment no. 2. He replied that they would be considering things other than just what was dissolved in the water. That could include impacts upon aquatic life in the streams.

CHAIR. GROSFIELD asked if the board did that in adopting other water quality rules. **Mr. Horpestad** responded that the board hasn't because they have had total recoverable standards.

Vote: MOTION TO ADOPT AMENDMENTS NO.sb033103.amk AS CONTAINED IN EXHIBIT 19, FAILED.

Motion/Vote: SEN. FOSTER MOVED TO DO PASS SB 331 AS AMENDED. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

{Tape: 4; Side: A}

EXECUTIVE ACTION ON SB 247

Motion/Vote: SEN. COLE MOVED TO TABLE SB 247. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 391

Motion: SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. sb039101.ate AS CONTAINED IN EXHIBIT 20.

CHAIR. GROSFIELD explained the amendments to the committee members. He said the amendments were in response to concerns from people who testified on the bill.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb039101.ate, CARRIED UNANIMOUSLY.

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-18-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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SENATE STANDING COMMITTEE REPORT

February 20, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 331 (first reading copy -- white), respectfully report that SB 331 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 5.
Strike: "RULES OR"
Insert: "TREATMENT"

2. Title, line 6.
Following: "ECONOMICALLY"
Insert: ", ENVIRONMENTALLY,"
Following: "FEASIBLE;"
Strike: "AND"

3. Title, line 7.
Strike: "75-5-201,"
Strike: "75-5-306,"
Strike: "75-5-611,"

4. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1, line 25.
Following: "unenforceable."
Insert: "[Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards."

6. Page 2, lines 1 and 2.
Strike: ":" on line 1 through "(a)" on line 2

7. Page 2, lines 4 and 5.
Strike: "; and" on line 4 through "75-5-307" on line 5

8. Page 2, line 10 through page 4, line 6.
Strike: section 2 in its entirety
Renumber: subsequent sections

Amd. Coord.
Sec. of Senate

9. Page 4, line 9.
Following: "applicant,"
Insert: "permittee, or person potentially liable under any state or federal environmental remediation statute,"

10. Page 4, line 23.
Following: "~~parameter~~"
Insert: "for a parameter if that change is likely to affect a beneficial use"

11. Page 5, line 7.
Strike: "(a)"

12. Page 5, lines 9 and 10.
Strike: subsection (10)(b) in its entirety

13. Page 5.
Following: line 15
Insert: "(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc."
Renumber: subsequent subsections

14. Page 5, line 19.
Strike: "(a)"

15. Page 5, lines 23 and 24.
Strike: subsection (14)(b) in its entirety

16. Page 6, line 26.
Following: "lagoons"
Insert: "used solely for treating, transporting, or impounding pollutants"

17. Page 7, line 16.
Following: "20"
Insert: ", following the time schedule of the lead agency"

18. Page 7, line 29 through page 8, line 4.
Strike: section 6 in its entirety
Renumber: subsequent sections

19. Page 8, line 10.
Strike: "intermittent" through "that"
Insert: "streams that, due to sporadic flow,"

20. Page 8, line 11.

Strike: "a viable fishery"
Insert: "an aquatic ecosystem that includes salmonid or nonsalmonid fish"

21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) for measuring carcinogens in surface water, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens;

(b) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations;

(c) standards for the protection of aquatic life do not apply to ground water; and

(d) standards may not exceed the maximum contaminant levels obtained from 40 CFR, part 141, as of [the effective date of this act]"

22. Page 9, lines 9 through 11.
Strike: "a" on line 9 through "liter" on line 11
Insert: "changes to ground water quality are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) .7.5 milligrams per liter for nitrate sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 milligrams per liter primarily from sources other than human waste"

23. Page 9, line 25.
Strike: "acquires information"
Insert: "is presented with facts indicating"

24. Page 9, lines 26 and 27.

Strike: "60" on line 26 through "75-5-307" on line 27
Insert: "90 days, initiate rulemaking"

25. Page 10, lines 6 and 15.
Following: "economically"
Insert: ", environmentally,"

26. Page 10, line 14.
Following: "so"
Insert: "through rulemaking, for parameters likely to affect beneficial uses,"

27. Page 10, line 15.
Following: "feasible."
Insert: "Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301."

28. Page 10, line 30 through page 11, line 8.
Strike: section 11 in its entirety
Renumber: subsequent sections

29. Page 11, lines 17 through 19.
Strike: "The" on line 17 through "waters" on line 19
Insert: "Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:

(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or

(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters"

30. Page 12, line 6.
Following: "applications for"
Insert: "new"
Strike: "30"
Insert: "60"

31. Page 12, lines 8 and 9.
Strike: "deficiency" through "initial notice" on line 9
Insert: "major deficiency issues, based on the information submitted. The department and the applicant may extend

these timeframes, by mutual agreement, by not more than 75 days"

32. Page 12, line 27.
Strike: "industrial or other"

33. Page 12, line 28.
Strike: ";"
Insert: ". Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters and the department has the opportunity to participate in the review of the activity."

34. Page 13, line 12 through 15, line 9.
Strike: section 15 in its entirety
Renumber: subsequent sections

35. Page 16, line 4.
Strike: "When"
Insert: "In an action"
Following: "account"
Insert: "and the court shall consider"

36. Page 16, line 9.
Following: "amounts"
Insert: "voluntarily"

37. Page 16, lines 23, 26, and 27.
Following: "~~drainage,~~"
Insert: "drainage,"

38. Page 17, line 6.
Following: "~~drainage,~~"
Insert: "drainage,"

39. Page 17, line 8.
Following: "specification"
Strike: ";"
Insert: ". However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section."

40. Page 17, lines 15 and 17.
Strike: "through 3"

Insert: "and 2"

41. Page 17.
Following: line 17
Insert: " NEW SECTION. **Section 17. Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval."

-END-

EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB-331

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Sen. Beck
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 14, 1995

1. Title, line 5.
Strike: "RULES OR"
Insert: "TREATMENT"

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Strike: "75-5-611,"

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SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB-331

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Strike: "(a)"

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Strike: subsection (10)(b) in its entirety

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Insert: "(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc."
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Strike: "a viable fishery"
Insert: "an aquatic ecosystem that includes salmonid or nonsalmonid fish"

21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming

continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens.

(b) for measuring carcinogens in surface water, the water quality criteria for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and

(d) criteria for the protection of aquatic life do not apply to ground water"

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Following: "economically"
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SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB 331

parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301."

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Strike: section 11 in its entirety
Renumber: subsequent sections

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Strike: "The" on line 17 through "waters" on line 19
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(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or
(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters"

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Following: "applications for"
Insert: "new"
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Strike: section 15 in its entirety
Renumber: subsequent sections

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Strike: "When"
Insert: "In an action"
Following: "account"
Insert: "and the court shall consider"

36. Page 16, line 9.

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB-321

Following: "amounts"
Insert: "voluntarily"

37. Page 16, lines 23, 26, and 27.
Following: "~~drainage,~~"
Insert: "drainage,"

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Following: "~~drainage,~~"
Insert: "drainage,"

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Strike: ";"
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Insert: " NEW SECTION. **Section 17. Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval."

DISCUSSION DRAFT -- 1

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT; ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT ~~RULES OR~~ TREATMENT STANDARDS BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; AND AMENDING SECTIONS 75-5-103, 75-5-106, ~~75-5-201,~~ 75-5-301, 75-5-302, 75-5-304, 75-5-305, ~~75-5-306,~~ 75-5-401, 75-5-403, 75-5-605, ~~75-5-611,~~ 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101. It is concerned that implementation of the water quality laws has in the past been too dependent on assumptions and conjecture springing from experiences and circumstances from other states and has not been sufficiently based on the conditions and needs of our state. The legislature intends that, in promulgating rules under this bill, the board of health and environmental sciences should seriously consider the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific justification and never on the basis of projections or conjecture. The legislature is specifically concerned that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as

a practical matter, be unenforceable. [Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Standards more stringent than federal standards.** (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria if:

~~(a)~~ the board makes written findings, based on sound scientific or technical evidence in the record, which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of the state~~; and~~

~~(b) the action is taken pursuant to 75-5-307~~.

(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the public health and environmental information and studies contained in the record that forms the basis for the board's conclusion.

~~NEW SECTION. Section 2. Standards of water quality. (1) Notwithstanding the provisions of [section 1], in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:~~

~~(a) Except as provided in subsection (1)(b), the board shall use as standards of water quality values that are no more stringent than the values set forth in the following table:~~

~~Water Quality Criteria~~

Parameter	Human Health	Aquatic Life (Acute)	Aquatic Life (Chronic)
A. Metal Parameters (expressed in micrograms per liter)			
Aluminum		750	87
Antimony	6		
Arsenic	50	360	190
Beryllium	4		
Barium	2,000		
Cadmium	5	3.9*	1.1*
Chromium	100	16**	11**
Copper	1,300	18*	12*
Fluoride	4,000		
Iron	300		1,000
Lead	5	82*	3.2*
Manganese	50		
Mercury	2	2.4	0.012
Nickel	100	1,400*	160*
Selenium	50	20	5
Silver	50	4.1	
Thallium	2		
Zinc	5,000	120*	110*
B. Other Parameters (expressed in milligrams per liter)			
Nitrate	10		
Ammonia		25***	2.2***
pH	6 to 9 std. units		
Sulfate	1,800		

Notes: All metal parameters are stated as dissolved, and compliance must be measured using dissolved methods.

* Hardness dependent (value assumes hardness if 100)

** Hexavalent

*** Ammonia is pH and temperature dependent (value of pH

~~= 7; T = 10);~~

~~(b) For parameters not included in subsection (1)(a), the board shall use maximum contaminant levels as established under 40 CFR, part 141, as the standards of water quality for human health.~~

~~(c) For parameters not included in subsection (1)(a) and for which maximum contaminant levels have not been established, the board may formulate and adopt standards of water quality for human health that satisfy the following criteria:~~

~~(i) The values must be based on scientifically valid studies and derived in a manner consistent with draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental pollutants.~~

~~(ii) For carcinogens, the values must represent a concentration associated with an excess lifetime cancer risk level because of continuous lifetime exposure not to exceed 1×10^{-4}.~~

~~(iii) For systemic toxicants, the values must represent a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of deleterious effects during a lifetime.~~

~~(d) For all metal parameters not included in subsection (1)(a), the values used by the board as standards of water quality must be stated as dissolved concentrations.~~

~~(2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any parameter.~~

~~(3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that cause effects other than cancer or mutation.~~

NEW SECTION. Section ~~3.~~ 2. Site-specific standards of water

quality for aquatic life. Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

Section ~~4.~~ 3. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters ~~for a parameter~~ for a parameter if that change is likely to affect a beneficial use. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on

quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) ~~(a)~~ "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.~~

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters~~,~~ pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(13)~~(14) "Mixing zone" means an area established in a permit or

final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(14)~~(15) ~~(a)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location authorized in a permit issued by a state or federal agency.~~

~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~(18) "Person" means the state, ~~a~~ political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor~~;~~ or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

~~(23)~~(24) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground~~; however, this subsection~~.

(b) The term does not apply to:

(i) privately owned ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state

waters.

~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section ~~5.~~ 4. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings involving the same project conducted by the department of state lands under Title 82, chapter 4, and by the department of natural resources and conservation under Title 75, chapter 20, following the time schedule of the lead agency. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

~~**Section 6.** 5. Section 75-5-201, MCA, is amended to read:~~

~~"75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this chapter and shall ensure that requirements imposed by the rules are cost-effective and economically and technologically feasible.~~

~~(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."~~

Section ~~7.~~ 5. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of ~~75-5-302 through 75-5-307 and~~ 80-15-201 and this chapter, the board shall:

(1) establish ~~and modify~~ the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for ~~intermittent or ephemeral streams that~~ streams that, due to sporadic flow, do not support ~~a viable fishery~~ an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water ~~purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality ~~that are cost-effective and economically and technologically feasible~~, giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(b) for measuring carcinogens in surface water, the water quality criteria for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens;

(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and

(d) criteria for the protection of aquatic life do not apply to ground water;

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water ~~purity and classification~~ quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically

identified~~,~~ and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; ~~and~~

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; ~~and~~

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that ~~a domestic septic system and drain field that meets the minimum state standards results in nonsignificant changes to water quality and is not required to undergo review under~~

~~75-5-303(3) unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter~~ changes to ground water quality are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(ii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iii) 7.5 milligrams per liter from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section ~~8.~~ 6. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revised classifications not to lower water quality standards -- exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at

the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department ~~acquires information~~ is presented with facts indicating that a body of water is misclassified, the board shall, within ~~60 days of acquiring the information, take action pursuant to 75-5-307~~ 90 days, initiate rulemaking to correct the misclassification."

Section ~~9.~~ 7. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system~~;~~;

(b) adopt effluent standards as defined in 75-5-103~~;~~;

(c) adopt toxic effluent standards and prohibitions~~;~~; and

(d) establish standards of performance for new point source discharges.

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section ~~10.~~ 8. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and

economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

~~Section 11. Section 75-5-306, MCA, is amended to read:~~

~~"75-5-306. Purer than natural unnecessary -- dams. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream~~ water ~~as long as the minimum~~

~~treatment requirements established under this chapter are met.~~

~~(2) For the purpose of issuing permits under this part, "Natural" "natural" refers to conditions or material present from runoff or percolation over which man has no control the water quality as of July 1, 1971, or to runoff or percolation from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural."~~

Section ~~12.~~ 9. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. ~~The board may not require a permit for the discharge of ground water that is not altered from its ambient quality by the discharger as long as existing uses are not impacted in the receiving state waters~~ Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:

(i) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; or

(ii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section ~~13.~~ 10. Section 75-5-403, MCA, is amended to read:

"75-5-403. Denial or modification of permit -- time for review of permit application. (1) The department shall review for completeness all applications for new permits within ~~30~~ 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all ~~deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice~~ major deficiencies, based on the information submitted. The department and

the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. ~~Such~~ The hearing ~~shall~~ must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~ is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, ~~no~~ an order modifying ~~his~~ the permit ~~shall be~~ is not effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

~~(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.~~"

Section ~~14.~~ 11. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any ~~industrial or other~~ wastes where they will ~~in a location where they are likely to~~ cause pollution of any state waters~~;~~ . Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection.

(b) violate any provision set forth in a permit or stipulation,

including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

~~**Section 15.** Section 75-5-611, MCA, is amended to read:~~

~~"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:~~

~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

~~(b) the facts alleged to constitute the violation;~~

~~(c) the specific nature of corrective action that the department requires;~~

~~(d) as applicable, the amount of the administrative penalty that~~

~~will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and~~

~~(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.~~

~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:~~

~~(i) does not involve assessment of an administrative penalty; or~~

~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.~~

~~(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).~~

~~(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.~~

~~(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a~~

~~request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.~~

~~(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis and Clark County.~~

~~(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.~~

~~(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

~~(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.~~

~~(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.~~

~~(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.~~

~~(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition~~ and ~~the board may grant the petition for good cause shown.~~

~~(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

~~(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each~~

~~violation;.~~ ~~however~~ However, ~~the maximum penalty may not exceed $100,000 for any related series of violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

~~(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.~~

~~(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~"

Section ~~16.~~ 12. Section 75-5-614, MCA, is amended to read:

"**75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~, and the court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order

pending action on the temporary injunction."

Section ~~17.~~ 13. Section 75-5-631, MCA, is amended to read:

"75-5-631. Civil penalties -- injunctions not barred. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the state.

(4) ~~When~~ In an action seeking penalties under this section, the department shall take into account and the court shall consider the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ the violator's ability to pay~~, any~~ and prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and ~~any~~ other matters as justice may require."

Section ~~18.~~ 14. Section 75-5-636, MCA, is amended to read:

"75-5-636. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to

the person, association, corporation, or agency ~~which~~ that made the protest. If a violation is established by the investigation of the department, appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the application."

Section ~~19.~~ 15. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, ~~drainage,~~ drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, ~~drainage,~~ drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, ~~drainage,~~ drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, ~~drainage,~~ drainage, wastewater, or sewage disposal before ~~he~~ the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications~~;~~ . However, any facility reviewed by the department under Title 75,

chapter 5, is not subject to the provisions of this section.

(5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum contaminant level established by the board unless ~~he~~ the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or a rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

NEW SECTION. **Section ~~20.~~ 16. Codification instruction.** [Sections 1 ~~through 3~~ and 2] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1 ~~through 3~~ and 2].

NEW SECTION. **Section 17. {standard} Saving clause.** Section 75-5-614 does not affect proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 18. {standard} Effective date.** [This act] is effective on passage and approval.

-END-

EXHIBIT NO. 18
DATE 2-14-95
BILL NO. SB-331

Concept amendments to SB 331 as amended by Sen. Beck
(sb033102.amk)

Beck Amendment 10. Page 4, line 23.
Following: "~~parameter~~"
Insert: "for a parameter ~~if that change is likely to affect a beneficial use~~ likely to be affected by a proposed activity"

Beck Amendment 21. Page 8, lines 13 and 14.
Strike: "that" on line 13 through "feasible" on line 14
Insert: ", giving consideration to the economics of waste treatment and prevention. Standards adopted by the board must meet the following requirements:

(a) ~~for ground water, the water quality criteria must be the maximum contaminant level for those parameters for which an maximum contaminant level, as found in 40 CFR, part 141, has been determined, except in the case of carcinogens. For carcinogens, the water quality criteria must be the more stringent of the maximum contaminant level, if any, or the value associated with an excess lifetime cancer risk level, assuming continuous exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-4 for other carcinogens.~~

~~(b)~~ for measuring carcinogens in surface water, the water quality ~~criteria~~ standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x ~~10-4~~ 10-5 for other carcinogens;

~~(c) for all metal parameters, the values used by the board as criteria for standards of water quality must be stated as dissolved concentrations; and~~

~~(d)~~ (b) ~~criteria~~ standards for the protection of aquatic life do not apply to ground water

(c) in no event may standards exceed the maximum contaminant levels obtained from 40 CFR part 141, as of [the effective day of this act]"

Beck Amendment 33. Page 12, line 28.
Strike: ";"
Insert: ". Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection, if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters and the department has the opportunity to participate in the review of the activity."

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-18-96
BILL NO SB-331

Amendments to Senate Bill No. 331
First Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 17, 1995

1. Page 4, line 10.
Strike: "shall"
Insert: "may"

2. Page 4, line 13.
Following: "criteria"
Insert: "and must include a consideration of the affects of other routes of exposure"

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB331 NUMBER 10

MOTION: TO STRIKE AMENDMENT No 21, Subsection ~~(e)~~

Failed 6-5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-18-95 BILL NO. SB-331 NUMBER 11

MOTION: TO DO PASS AS AMENDED

PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on March 13, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Carley Tuss (D)

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 330, SB 331
Executive Action: HB 521 Do Pass As Amended
SB 362 Do Pass As Amended
SB 252 Tabled

Tape 1, Side A

(Note: Testimony and discussion pertaining to both SB 330 and SB 331 can be found in each of the hearings for these two bills.)

HEARING ON SB 330

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, Senate District 17, Dillon, said SB 330 proposes an amendment to the water quality nondegradation provisions of Montana water quality laws, changes the definition of high-quality waters, changes the definition of interested persons and amends sections 75-5-103 and 75-5-303, MCA. Under current law, almost every drop of water in the state is classified as high-quality water. Lowering one parameter of the 240 established parameters would constitute a degradation of the current definition of high-quality water. The bill proposes to protect the high-quality of waters in Montana and at the same time put some common sense into the classification of waters.

Proponents' Testimony:

Peggy Trenk, Western Environmental Trade Association. Written testimony. **EXHIBIT 1 (SB 330 and SB 331)**

John Bloomquist, Montana Stockgrowers Association, said the current definition of water quality degradation is the lowering of a parameter even if there is no effect on any beneficial use. Standards, criteria and definitions under the Water Quality Act should be tied to the concept of beneficial use. SB 330 would accomplish this. The present definition of high-quality waters is essentially all waters in Montana. The proposed definition recognizes that some waters in the state are not high-quality waters. The changes in SB 330 are necessary to maintain a reasonable nondegradation policy for Montana.

Larry Brown, Agricultural Preservation Association, said surface water pollution is largely due to uncontrollable sources. Permitting has advanced to the point where the state is approaching zero risks regardless of whether it is the impact on the environment or the impact on humans. It is unrealistic, unachievable and an unnecessary band-aid.

Max Botz, President, Hydrometrics, Inc., Helena, said the regulatory programs have become more complex than anywhere in the United States. All waters in the state are defined as high-quality. Colorado, Idaho, Wyoming and Utah have high-quality waters also, but they have not declared all their waters high-quality. These states have only declared the waters that are truly high-quality. SB 330 proposes that all waters continue to meet water quality standards. All it does is delineate the nondegradation provision.

The following proponents supported SB 330:

David Owen, Montana Chamber of Commerce

Lorna Frank, Montana Farm Bureau

Don Allen, Montana Wood Products Association

Tape 1, Side B

Carl Schweitzer, Montana Contractors Association

Collin Bangs, Montana Association of Realtors

Mike Murphy, Montana Water Resources Association

Gail Abercrombie, Montana Petroleum Association

Bob Williams, Montana Mining Association

Jim Kembel, City of Billings

Employees of Pegasus Gold Corporation. Written testimony. **EXHIBIT 2** (SB 330 and SB 331)

K. D. Feeback, Lincoln. Written testimony. **EXHIBIT 3** (SB 330 and SB 331)

Don Peoples, Montana Technology Companies, Inc., Montana Energy Research & Development Institute. Written testimony. **EXHIBIT 4** (SB 330 and SB 331)

Opponents' Testimony:

Hope Stevens, Self, said SB 330 is going to do irrevocable harm to the waters of the state and to the citizens of Montana.

Kenneth Knapp, Montana River Action Network, said SB 330 and SB 331 propose nothing short of war on Montana's waters. The mining industries' war on waters threatens to degrade the water quality of some of the most pristine and beautiful waters of the world, held in high esteem by people from all over the world who come to Montana to utilize it. **Mr. Knapp** submitted a map and list showing 25 waters at risk in Montana. **EXHIBIT 5**

Brian Kuehl, Greater Yellowstone Coalition. Written testimony. **EXHIBIT 6**

Julia Page, Northern Plains Resource Council. Written testimony. **EXHIBIT 7**

Alan Rollo, Montana Wildlife Federation. Written testimony. **EXHIBIT 8**

Don Spivey, Whitefish, Self, Citizens for a Better Flathead. Written testimony. **EXHIBIT 9**

Don Kern, Board of Directors, Canyon Coalition. Written testimony. **EXHIBIT 10**

Tape 2, Side A

Paul Roos, Representing Land Lindbergh, Greenough and North Powell Conservation Supervisors. Written testimony. EXHIBITS 11 and 12

Vicki Watson, Associate Professor, Biology, University of Montana, Self, Clark Fork-Pondera Coalition. Written testimony. EXHIBIT 13

Steve Pilcher, Department of Health and Environmental Sciences, said the department is concerned with the definition of degradation in SB 330. Mr. Pilcher said it was his understanding that alternate language to the definition of degradation will be offered in conjunction with SB 331. However, without knowing the fate of that bill and without ensuring that the coordination clause that is proposed in the bill will come into play and address the definition issue, it is only fair to express the department's concerns.

Paul Hawks, Rancher, Melville. Written testimony. EXHIBIT 14

Sally Jones, Self, said article 9, section 1, of the Montana Constitution prohibits the Legislature from allowing any degradation of Montana's high-quality water. Ms. Jones urged the committee to table SB 330 and SB 331.

The following opponents expressed opposition to SB 330 or had written testimony:

Jim Emerson, Self, Helena

Ron Cunningham, Fishing Outfitters Association of Montana

Jim Curtis, Sierra Club. Written testimony. EXHIBIT 15

Jim Barrett, Beartooth Alliance, Cooke City

Mike Geary, Self

Grant Parker, Mullendore, Tawney, Watt, Parker & Johnson, Attorneys At Law. Written testimony. EXHIBIT 16

Jim Carlson, City-County Health Department, Missoula

John Smart, Self, Island Mountain Protectors Association.

Louise Bruce, Montana Wilderness Association

Florence Ore, Concerned Citizens of Pony

Tony Schoonen, Anaconda Sportsmens Association

Bill Holdorf, Skyline Sportsmens Association

Jim Jensen, Montana Environmental Information Center

Steve Kelly, Friends of the Wild Swan

George Ochenski, Trout Unlimited

Mike Biedscheid, Self, Whitefish. Petition against SB 330 and SB 331. EXHIBIT 18

Randy Penez, Fort Belknap Tribes

Stan Krager, Self, Helena

Cecil Davis, Self, Helena. Written testimony. **EXHIBIT 19**

J. V. Bennett, Montana Public Interest Research Group. Written testimony. **EXHIBIT 20**

Dana Boussard, Self, Arlee. Written testimony. **EXHIBIT 21**

Willa Hall, League of Women Voters. Written testimony. **EXHIBIT 22**

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY asked **SEN. SWYSGOOD** why he wanted to remove the public from "interested persons" and change the definition to include only property owners. State waters belong to all citizens in Montana. **SEN. SWYSGOOD** said the language was taken from a court decision by **Judge McCarter** on the Stillwater Mine. The public will still have the opportunity to make comments to the agency involved. **REP. RANEY** asked **SEN. SWYSGOOD** if the public would have the same impact as the property owner in a siting decision on degradation. **SEN. SWYSGOOD** said he wasn't sure.

REP. KARL OHS asked **Mr. Pilcher** to explain classifications three and four of ground waters. **Mr. Pilcher** said class three and class four ground waters are those that have a total dissolved solids level in the range of 10,000 parts per million. The waters are classified in those two classifications because of the high dissolved solids which render them of marginal use for most beneficial purposes. The waters are not necessarily suitable for drinking even under desperate situations.

REP. CLIFF TREXLER asked **Mr. Pilcher** if all the municipalities in Montana were complying with the water quality laws. **Mr. Pilcher** said he didn't want to go as far as to say all municipalities are in compliance with water quality laws. The water quality standards are used by the Water Quality Division when it issues permits for the discharge of waste in the waters. Every municipality that discharges waste into the state's waters must

have a waste discharge permit. The limits that are imposed as conditions on the quality of the discharge are based on protection of beneficial uses and compliance with surface water quality standards.

Tape 2, Side B

REP. JON ELLINGSON asked **Mr. Pilcher** to explain the designated uses that are referred to under exceptions on page 2 of the bill. **Mr. Pilcher** said the Montana surface water quality standards identify a number of beneficial uses that are to be protected. Some of those uses are drinking and culinary purposes, irrigation, and fish and aquatic life. **REP. ELLINGSON** asked for an example of a river or lake that would not be capable of supporting one of the designated uses. **Mr. Pilcher** said, as a cautious example, a stream not capable of supporting any beneficial use would be Silver Bow Creek. Silver Bow Creek is classified at the current lowest classification recognized in the significant limitations.

REP. ELLINGSON said many people in his community fish and swim in the Clark Fork River. Missoula recharges its aquifer by way of the Clark Fork River. He asked **SEN. SWYSGOOD** if the city of Missoula would be considered an "interested person" under the new definition. **SEN. SWYSGOOD** said if the city has an interest that is liable to be affected by the degradation process, it would be classified as an "interested person." **REP. ELLINGSON** said he understood that an "interested person" was a property owner. A water company in Missoula drills wells and takes water out of the aquifer. He asked **SEN. SWYSGOOD** if he considered the water company or the city of Missoula to be interested parties. **SEN. SWYSGOOD** said probably not.

REP. BILL TASH asked **Mr. Pilcher** to explain specifically why he was concerned about the definition of degradation. **Mr. Pilcher** said the department's primary concern is with the definition of degradation because that is what triggers the protection that the rules have been promulgated provide. If degradation does not apply to any waters, there is no need for the nondegradation process that has been developed. An amendment will be proposed for consideration of SB 331 that will address the definition of degradation. As it now stands, the definition of degradation is the same in SB 330 and SB 331. The amendment to be offered would revert back to the language that exists currently in the law. If the amendment is accepted, it would eliminate the department's concern.

REP. PAUL SLITER asked **Chris Tweeten, Department of Justice,** if SB 330 violates article 9, section 1, of the Montana Constitution as suggested by one of the opponents. **Mr. Tweeten** said he was the worst person to be asked that question because the Attorney General never expresses opinions on the constitutionality of pending legislation. The reason for that is in the event the legislation is enacted and the Attorney General's staff is called

upon to go to court to defend the legislation's constitutionality and it doesn't find that there are constitutional problems, it would undermine the arguments that the staff would need to present. However, if SB 330 is enacted, the Attorney General's office will study it in great detail to determine whether its constitutionality can be protected under the Montana Constitution.

REP. HAL HARPER referred to page 8 of the bill that states that the department may review authorizations to degrade state waters and may modify the authorization if it determines that an economically, environmentally, and technologically feasible modification to the development exists. He asked **Mr. Pilcher** if he thought the extent of the modification would constitute the possibility of revoking the authorization. **Mr. Pilcher** said the language referred to was inserted on the Senate floor. There was considerable discussion in Senate Natural Resources. The primary concern was whether the language enabled the department to significantly modify an authorization to the equivalent of a revocation. That is a legal question that needs to be answered. Without the language to revoke an authorization, it would preclude the department from considering some alternatives.

REP. SLITER asked **Alan Joscelyn, Attorney,** if, in his opinion, SB 330 violates article 9, section 1, of the Montana Constitution. **Mr. Joscelyn** said he believed that the legislation is constitutional. The constitution requires the Legislature to act reasonably in defining what is and what is not allowable degradation.

Michael Kakuk, Legal Counsel, Environmental Quality Council (EQC), told the committee that the council undertook a year and a half study that addressed the nondegradation issue. One of the sub-issues it looked at was the constitutionality of Montana's new nondegradation policy. The report has been completed and copies are available for anyone that is interested.

Tape 3, Side A

REP. RANEY asked **Mr. Pilcher** if there is a stream that is presently degraded from a mining operation and has no beneficial use, does it mean that it is all right to dump anything and everything into it. **Mr. Pilcher** said other provisions of the Montana Water Quality Act would prevent conditions from worsening in that situation.

REP. DANIEL FUCHS asked **Mr. Pilcher** how many of the public water supplies are in compliance with the current nondegradation policy. **Mr. Pilcher** said generally the provisions and the impact of the nondegradation policy do not impact public water supplies.

REP. FUCHS redirected his question to **Mr. Kuehl.** **Mr. Kuehl** said the nondegradation policy that is being debated has not been implemented. The rulemaking was only approved on July 15, 1995.

There is not one polluter that is out of compliance with the nondegradation policy because not one polluter has gone through the nondegradation policy at this point in time. The nondegradation policy hasn't been tried out to determine if it is a good policy. The policy has been enacted and is being changed before it has even been tried out.

Closing by Sponsor:

REP. SWYSGOOD said all that SB 330 proposes to do is to put some reasonableness into the interpretation of what high-quality waters are. It is not the intention of the bill to degrade the quality of life in Montana, or to degrade the quality of waters that should rightfully be protected.

HEARING ON SB 331

Opening Statement by Sponsor:

SEN. TOM BECK, Senate District 28, Deer Lodge, said he was born and raised in the Deer Lodge valley. He has watched the Clark Fork River waters turn red, gray and into all kinds of waters. At present it is a fairly clear stream. There are trout in that stream and there will continue to be trout in that stream. There is a major cleanup of the stream that is continuing. SB 331 will put some common sense into the water quality standards of the state. The present standard for arsenic is 18 parts per trillion. The bill will reduce that standard to 20 parts per billion. The arsenic in the Madison River flows 50 parts per billion. There is a lot of sensationalism and hysteria regarding SB 331. The scientific community will describe what is really in the bill.

Proponents' Testimony:

Collin Bangs, Montana Realtors Association, said SB 331 will permit people to build affordable houses and will still do a good job of preventing the pollution of the state's water.

John Bloomquist, Montana Stockgrowers Association, pointed out the following benefits of SB 331:

> State standards that are more stringent than federal standards would be allowed if there is sound scientific or technical evidence that stricter standards are warranted.
>
> The definitional change of state waters would exclude those waters that are privately owned ponds or lagoons used solely for treating, transporting, or impounding pollutants; irrigation waters or land application disposal waters when the waters are used up within the irrigation or land
>
> application disposal system and the waters are not returned

to state waters.

Changes in the bill under prohibited activities would eliminate potential enforcement by making it unlawful to cause pollution by placing wastes where they are likely to cause pollution of state waters.

Classification changes in the bill create appropriate classification for intermittent streams where no fishery is supported.

Tape 3, Side B

Mr. Bloomquist said SB 331 makes reasonable and necessary changes to the Water Quality Act. SB 331 is not just a mining bill; it affects everyone who uses water.

Larry Brown, Agricultural Preservation Association, said SB 331 perfects the process of bringing science to the administrative process.

Lorna Frank, Montana Farm Bureau, supported SB 331 for the same reasons **Mr. Bloomquist** gave.

Chris Gallus, Representing Don Peoples, Montana Technology Companies, Inc., and Montana Energy and Research Development Institute. (See Exhibit 4)

Carl Schweitzer, Montana Contractors Association, supported SB 331.

Doug Parker, Crown Butte Mines, supported SB 331.

David King, Hydrogeologist, Schafer and Associates, said SB 331 establishes a water quality level for arsenic that protects the environment and recognizes Montana's unique geologic environment. The bill proposes to set arsenic levels at 20 parts per billion. To put this value into perspective, the current water quality protection standards for fish and aquatic life are 190 parts per billion. The EPA standards for drinking water are 50 parts per billion. In the upper Madison River there are 50 to 70 parts per billion of arsenic naturally occurring in the water. The average arsenic concentration of arsenic in the Missouri River in Townsend is 24 parts per billion. Laboratory detection levels for arsenic are only three parts per billion, yet the current Montana health standard is 0.018 parts per billion. That is less than a drop of water in an olympic sized swimming pool. The 20 parts per billion value will protect Montana's water quality. It is less than one-half of the federal and state standards for drinking water and it is significantly lower than water quality that is occurring naturally in Montana. **Mr. King** urged the committee to support SB 331.

Ray Lazuk, Hydrologist, Golden Sunlight Mines, said one of the purposes behind SB 331 is to put some clarification back into the regulations and address some technical issues that are presently left open to interpretation by regulatory personnel. Unfortunately, the interpretation hasn't always been consistent. Another important purpose is the recognition of the hydraulic characteristics of a water shed when developing water resource regulations. **Mr. Lazuk** urged the committee to support SB 331.

Sandra Stash, Engineer, Atlantic Richfield Company, said SB 331 encourages the use of site specific water quality criteria to direct water quality management in Montana. A permittee will look at the actual organisms in the water in an attempt to help the department set the water quality criteria appropriately. An amendment that will be offered will give a permittee some recourse if there is scientific debate between the department and the permittee.

The following proponents supported SB 331:

Don Allen, Montana Wood Products Association

Peggy Trenk, Western Environmental Trade Association

Mike Murphy, Montana Water Resources Association

David Owen, Montana Chamber of Commerce

Jim Kembel, City of Billings

Bob Williams, Montana Mining Association

Tim Wilkinson, John Wilkinson Construction, Great Falls

<u>Opponents' Testimony</u>:

Hope Stevens, Self, opposed SB 331.

Vicki Watson, Associate Professor, Biology, University of Montana, Self. Written testimony. **(See Exhibit 13)**

Tape 4, Side A

Steve Pilcher, Department of Health and Environmental Sciences (DHES), Water Quality Division, said until the department is sure the proposed amendments have been included in the bill it opposes SB 331 in its current form. The department's ability to develop site specific water quality standards when conditions so demand or dictate, is currently contained in Montana's water quality laws. However, all routes of exposure of a contaminant to the beneficial use have to be considered. It is essential that reference to other routes of exposure be included in the bill. The definition of degradation in SB 331 mirrors the definition of degradation in SB 330. The concerns raised about degradation in

SB 330 are appropriate for SB 331. The department has historically utilized the total recoverable method of metals analysis. The department is required under federal guidelines to use the total recoverable method in setting effluent limits for waste discharge permits in conjunction with MPDES program. DHES has yet to be convinced that switching to dissolved, where only the impact of the metals in the water column is analyzed, is in the best interest of the environment and of the state's water quality program.

Jim Carlson, City-County Health Department, Missoula. Written testimony. **EXHIBIT 23**

Kenneth Knapp, Montana River Action Network, urged the committee to table SB 331.

Chris Tweeten, Attorney General's Office, Department of Justice, said the department's interest arose initially from the claim against the American Refining Company (ARCO) over natural resource damages in the Clark Fork River Basin. In that lawsuit the state seeks to recover $630 million. In preparing the claim for trial the state has invested a considerable sum of money in conducting a natural resource damage assessment in the Clark Fork River Basin. Many of the water quality standards which are subject to change in SB 331 were incorporated in the damage assessment. The department is particularly concerned about the attempt in the proposed legislation to change the method of measuring water quality standards from recoverable to dissolved concentration. However, the amendments that will be offered will remove the reference to changing to dissolved concentration and will leave the law as it currently stands. The amendments go a long way toward addressing the problems that SB 331 has with respect to the Clark Fork River Basin litigation. SB 331, as it currently exists, may undercut the science that was the basis for the reports that the department is going to offer in the trial and there is a potential for decreasing the recovery.

Don Spivey, Self, Citizens for a Better Flathead. Written testimony. **EXHIBIT 24**

Brian Kuehl, Greater Yellowstone Coalition, Bozeman. Written testimony. **(See Exhibit 6)**

Alan Rollo, Montana Wildlife Federation. Written testimony. **EXHIBIT 25**

Tape 4, Side B

The following opponents expressed their opposition to SB 331.

Mark Shapley, Hydrogeologist, Island Mountain Protectors Association

Jim Jensen, Montana Environmental Information Center. Written testimony. EXHIBIT 26

George Ochenski, Trout Unlimited

Julia Page, Northern Plains Resource Council. Written testimony. EXHIBIT 27

Jim Curtis, Sierra Club

J. V. Bennett, Montana Public Interest Research Group. Written testimony. EXHIBIT 28

Robin Cunningham, Fishing Outfitters Association

Steve Kelly, Friends of the Wild Swan

Stan Frasier, Self, Helena

Florence Ore, Concerned Citizens of Pony

Jim Emerson, Self, Helena

Willa Hall, League of Women Voters of Montana. Written testimony. EXHIBIT 29

Paul Hawks, Rancher, Melville. Written testimony. EXHIBIT 30

Tim Wilkinson, John Wilkinson Construction, Great Falls. Written testimony. EXHIBIT 31

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JON ELLINGSON said it was hard to understand why SB 331 is needed. The proponents have said that the legislation will encourage economic development. Montana's economic development, the growth of per capita income, and almost every other measure of economic growth is leading the nation. One reason that Montana is leading the nation is that it has values that are very desirable, including its pristine environment and waters. REP. ELLINGSON asked SEN. BECK why Montana should tamper with any degradation of its water quality in the name of encouraging economic development when it doesn't need to. SEN. BECK said economic development hinges on more than just people moving into the state. There has to be jobs for those people. It appears that it has been quite difficult for the mining industry to permit mines. The agricultural industry has had to struggle to meet the water quality standards. The timber industry has also had some strains put on it due to the water quality standards. The legislation doesn't put the state's water quality below EPA standards. The standards would still be above many of EPA's standards.

REP. HAL HARPER asked **Ms. Watson** how the adoption of SB 331 would change the ultimate clean-up of the Clark Fork River. **Ms. Watson** said she hadn't assessed clean-up specifically, she concentrated mostly on its overall impact on the waters of all of Montana. One lawsuit and one particular set of problems shouldn't determine all of Montana's water quality policies. There has been too much attention addressed to the arsenic standards. The legislation loosens up the standards for all the other carcinogens as well. SB 331 would probably make it more difficult for the state to require the same level of clean-up than it would have required otherwise for the Clark Fork River.

REP. BOB RANEY asked **Mr. Pilcher** if trout can survive in water that is at the minimum drinking water standard. **Mr. Pilcher** said generally speaking, trout probably would survive, but it must be kept in mind that sometimes what is good for humans may not be good for fish and aquatic life. To protect fish and aquatic life, it may mean adopting standards that are different than the maximum contaminant levels for human consumption.

Tape 5, Side A

REP. EMILY SWANSON asked **SEN. BECK** which parties were involved in writing the amendments. **SEN. BECK** said he understood that the mining industry, DHES and possibly the Governor's office all worked on the amendments.

REP. DAVID EWER referred to a section in the bill that relates to the adoption of standards for pretreatment, effluent and performance of waste. Reference is made to establishing standards of performance for new point source discharges and that the Board shall ensure that the standards are cost-effective and economically, environmentally and technologically feasible. This seems to jeopardize the requirement for some sort of base line for standards. **REP. EWER** asked **Mr. Pilcher** to comment. **Mr. Pilcher** said surface water quality standards should not be subject to determination of what is economically feasible. Surface water standards have to be adopted to protect the beneficial uses. That section attempts to address the development of treatment standards and treatment requirements. The bill, in its current language, would require the department in setting treatment standards, to take into consideration things such as technology-based treatment requirements and economic and environmental feasibility.

CHAIRMAN KNOX said there had been some concerns expressed about the potential impact on livestock during calving season because of the rules that have been adopted by the department on water quality in stream corridors. **CHAIRMAN KNOX** asked **Mr. Pilcher** for his comments on those concerns and also how SB 331 would affect those concerns. **Mr. Pilcher** said the Water Quality Act requires people to refrain from causing pollution. The nondegradation provision is intended to deal with new and increased sources of contamination. If an individual has a feedlot or any confined

livestock operation located in such a manner that all of the waste that accumulates on the surface of that lot is flushed into an adjacent stream every time there is a natural precipitation event, there is a likelihood that pollution could occur. If the department finds that the discharge of that waste into the stream causes pollution and impacts the beneficial use, it would work with the responsible party to devise alternate methods of handling the run off from the feedlot. With the possible exception of the relaxation of the nitrate levels in ground water, SB 331 wouldn't change the threat to agriculture very much.

CHAIRMAN KNOX asked **Mr. Pilcher** if it could be assumed that existing livestock practices along the streams would be allowed to continue if there has not been any citation or cause for action. **Mr. Pilcher** said that assumption might be going one step too far. There is no grandfather protection for an operation that has existed for a number of years and has gone unnoticed by the department and found sometime in the future to be causing a water quality problem. The current law doesn't provide that protection and SB 331 doesn't either. Due to limited staff, the department has focused on the livestock operation areas that posed a serious threat to water quality where the impact to beneficial uses could be documented. The department would then work with the party to correct the problem.

Mr. Joscelyn explained the amendments to SB 331 at the request of **REP. SWANSON. EXHIBIT 32**

Tape 5, Side B

Closing by Sponsor:

SEN. BECK said the amendments to SB 331 may be compatible with **Governor Racicot**, some of the people in the department and industry, but he was not in total agreement with them. SB 331 will not degrade the waters of Montana. People will still be able to drink out of the streams.

EXECUTIVE ACTION ON HB 521

Motion: **REP. DOUG WAGNER MOVED HB 521 DO PASS.**

Discussion:

Copies of the Department of Health and Environmental Sciences' (DHES) comments on the fiscal note, discussion draft no. 2 and amendments to HB 521 were provided to the committee. **EXHIBITS 33, 34 and 35**

REP. WAGNER explained the comments from the department on the fiscal note.

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss			✓
Rep. Doug Wagner	✓		

EXHIBIT 11
DATE 3-13-95
SB 330/331

Western Environmental Trade Association

Aspen Court, 33 South Last Chance Gulch, Suite 2B
Helena, Montana 59601
Phone (406) 443-5541
Fax # 443-2439

TESTIMONY BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

MONDAY, MARCH 13, 1995

SENATE BILL 330/331

Mr. Chairman, Members of the Committee, my name is Peggy Trenk and I'm here today representing the Western Environmental Trade Association in support of SB 330(331).

It's no secret that this bill, and its companion legislation, have attracted a good deal of attention in the media and in the halls of this building. The value of the legislative process is that it allows ideas and proposals to be openly and thoroughly discussed with the intended outcome to be enactment of good public policy. This bill has undergone many changes in recent weeks as different interests have offered their input. From the perspective of accommodating these various points of view, SB 330 (and 331) is a probably a better bill today than when it was first introduced.

However, what has also emerged out of this public process is a series of inaccuracies about both the source, and the impact of this legislation. Before you hear from some other folks about what the bill actually does, I'd like to offer the Committee a brief perspective on what I call "Modern Legislative Mythology - 101".

1. MYTH NUMBER 1: SB 330/331 IS A MINING BILL

SB 330 and some of the other pieces of legislation you have or will consider are important to the mining industry. But the mining industry is by no means the only interest who has a stake in this bill. Following passage of SB 401 last session, a coalition of interests and industries came together to participate in the extensive rulemaking process undertaken to implement that bill. In the latter part of that process, those groups submitted joint testimony to the Board of Health and Environmental Sciences on what we all believed were changes necessary to make the rules minimally workable. That group represented realtors and homebuilders, agriculture, oil and gas, timber, main street businesses, contractors, mining, and citizen organizations. I recall at one point, one of the Board of Health members remarked that it appeared we collectively represented 90% of the state's economy. While I can't verify that percentage, I can say with reasonable certainty this "coalition" spoke directly for 64,000 Montanans.

Now what has all that got to do with SB 330/331? The point of all that is, this bill is also a product of those same groups and the people they represent. It was clear that even as the existing rules were adopted last summer, they still contained significant workability problems identified by the various participants. Yes, the mining industry has a stake in this bill, but so do a lot of other folks across Montana who raise livestock, and build homes, and pick up the tab for local water treatment plants -- folks on whose behalf Senator Swysgood and those who signed on to this bill have stepped forward to make the nondegradation law a workable policy.

2. MYTH NUMBER 2: SB 330 AND RELATED BILLS ROLL ENVIRONMENTAL PROTECTION BACK 20 YEARS.

The water quality bills that have generated the most controversy this session are not a frontal assault on Montana's environmental laws. As I mentioned earlier, they derive primarily from what has happened in the last two years since passage of SB 401.

The other day some of the opponents to these bills had a rally here at the Capitol and one of the signs outside read, "Who Elected Gary Langley"? Now some of those who know Gary pretty well immediately countered with the question, "Who would elect Gary Langley", but then that's another story entirely.

I would suggest a better sign might have been, "Who elected the staff at the Department of Health and Environmental Sciences to set environmental policy in Montana?" Regulators play an important role in protecting our environment, but I have always understood that role to be in IMPLEMENTING THE POLICY set down by the Legislature, not in SETTING THEIR OWN POLICY. You are the people who set policy.

We were among those who supported SB 401 in 1993 because we thought it was important for the public, DHES, and the regulated industries to clarify the existing nondegradation law. It is our believe that the rules that emerged in this interim to implement that law reached beyond what you, the Legislature, intended in SB 401 and that the Department did in fact, SET new policy in some areas. I don't mean that as a criticism of the Department

or the Board of Health and Environmental Sciences. They did a very good job of trying to seek public comment and involvement in drafting the rules. The problem is, when people start from a different set of assumptions about legislative policy, they rarely arrive at the some point of agreement.

If we were disagreeing about how many times to mow the Capitol lawn this summer, that difference of opinion wouldn't matter. But how we implement the water nondegradation law has such a significant impact on our environment, on our economy, and on the people who live in this state that we felt it necessary to come back in this legislative session to better clarify the state's policy--knowing full well we'd be criticized for doing so. We simply don't feel DHES accurately captured the legislative intent in their rules, and apparently, neither did the Montana Senate a few weeks ago when a bi-partisan majority voted in support of SB 330(331).

In other words, we aren't asking you to overturn 20 years of environmental law, but rather to determine whether regulatory requirements established to implement SB 401 went beyond the intent of Legislature, and if so, to provide better guidance as to how to bring them back in line with the policy you have set.

And finally,

3. MYTH NUMBER THREE: SB 330 (AND ITS COMPANION LEGISLATION) IS THE WORK OF EVIL CORPORATE POLLUTERS AND WILL INCREASE CANCER RATES IN MONTANA

I don't know how much time members of this Committee have had to devote to following the national media or that of our neighboring states in recent months, but when it comes to proposals that will impact existing environmental laws -- whether they involve air or water quality, farming practices or timber harvest, you can count on a similar theme to be attributed to the environmental community. Somewhere in that article, there will likely be an attempt to link whatever the applicable issue might be to "evil corporate polluters" and the fear that it will somehow lead to increases in "cancer". That has been particularly true in the local media regarding SB 330 and SB 331. Unfortunately, the facts don't always bear that out and they certainly haven't in this case. We who represent industry are criticized, and at times fairly criticized, for seeking to justify what we believe only in terms of "JOBS" and "WHAT IT WILL COST TO COMPLY". Maybe we do sound like a broken record sometimes.

But if that's the case, the themes of "corporate polluter" and "cancer" are the flip side of that same broken record. The difference is, we are called upon to quantify those job numbers, to identify the goods and services we contribute to the economy of Montana, to explain to homeowners why their water rates have gone up, and to identify why regulatory policy is important to all those considerations. Those who words like "corporate greed" and "cancer" should have to be as accountable for their statements as the folks I represent. If they can

illustrate by virtue of the facts that these are legitimate concerns, then by all means they should be considered. But to this point in the debate, there has been little proof to support those arguments.

In sum, there is a lot of issues that this Committee will want to weigh as they consider the merits of this and related water quality bills. Yours is not an easy task, but I am confident as you hear the ensuing testimony, it will become clear what is proposed in this bill makes sense and provides for sound public policy. In closing, I'd like to acknowledge recent reports about the strength of Montana's economy. I haven't reviewed those in any depth, but who can find fault with a growing economy. My only question is, how much better might those numbers be if we made sure we provided for a reasonable and consistent regulatory climate. What's good can always get better.

I want to thank you all for your attention and I encourage your support of this legislation.

EXHIBIT 3
DATE 3-13-95
SB 330 / 331

March 10, 1995

KD Feeback
PO Box 907
Lincoln, Montana 59639

Senator Tom Beck
Montana State Senate
Capitol Station
Helena, Montana 59620

Dear Sir,

I am writing to voice my support for both SB 330 & SB 331. I am an avid outdoors person and come from several generations of people who have made their livly-hood from the land. Neither I nor the people I live around want to see our environment degraded, however, we must make a living as well. As a corollary I'd like to voice my support for SB 252 & SB 362.

Our laws governing regulation of Montana's water are not only unenforceable, they are unrealistic. Currently, proponents of the existing water regulations have selectively used them against the mining and timber industry. I feel certain that eventually the same unrealistic laws will be used to castigate municipal water systems as well as agricultural industries.

I also support reasonable reclamation guidelines for hard rock mining, SB 338.

Thank you for your proactive measures in these endeavors.

Cordially,

KD Feeback

EXHIBIT 4
DATE 3-13-95
SB 330/331

Testimony
Donald R. Peoples
Montana Technology Companies, Inc. &
Montana Energy Research & Development Institute

Montana House of Representatives
Natural Resource Committee
Room 437, 3:00 p.m. (or Adjournment)

Mr. Chairman, members of the committee. For the record my name is Don Peoples, CEO/President of Montana Technology Companies, and the Montana Energy Research & Development Institute in Butte. My company is involved in research and development of environmental waste remediation technologies, and we are very concerned about economic development in Montana. It is for these reasons that we appear today in strong support of Senate Bills 330 and 331.

As the former Chief Executive of Butte-Silver Bow, and now as President of a company involved in economic development, I understand the importance of Montana's natural resources based economy. When the mines closed in Butte, and again when they re-opened, I completely understood the impacts that our natural resource industries have on our communities. And as a life-long resident of Butte, I am aware of the environmental impacts that can occur from mining and inadequate regulation.

We should expect that industries operating in Montana provide protection for our environment. That is in our constitution, and it is important to Montanans. Yet it is possible that we can go to far. Some of our protective standards cause great harm to industry and workers while resulting in little or no tangible benefit to the environment.

Montana should provide a standard of protection justified by our need to maintain a healthy environment and a healthy economy. Unfortunately some see these

two goals as mutually exclusive. My experience tells me we can do both, and these bills allow us to do both.

Montana needs to step away from the extremism on both sides of this debate and put forth sensible regulation that protects the environment and allows our natural resource based industries to operate under some stability. Simply put, these bills:

Create a reasonable and sensible standard by which to regulate industries and other water dischargers (i.e. cities);

Sets attainable and measurable human health standards;

Protects recreational opportunities important to the citizens of Montana;

Provides some added stability to an industry that provides significant revenue for local governments, schools, and the state; and

Helps protect Montana jobs and the families those jobs support.

You will hear, that these bills are an assault on our environment, and that these bills represent some sort of legislative atrocity if passed. My experience tells me that nothing could be further from the truth, and that the only potential atrocity is for Montana to fail to enact practical well reasoned regulations, and continue this debate along the old environmentalist vs. industry debate.

Contrary to what some would have you believe these bills do not return us to a state of unregulated, unchecked industrial development. They do not create standards which are unsafe for humans and leave fisheries unprotected. They do not create unbridled benefits to industry to the exclusion of Montana citizens. All these bills do is set a safe and sensible standard, that provides stability and meets the expectations everyday Montanans.

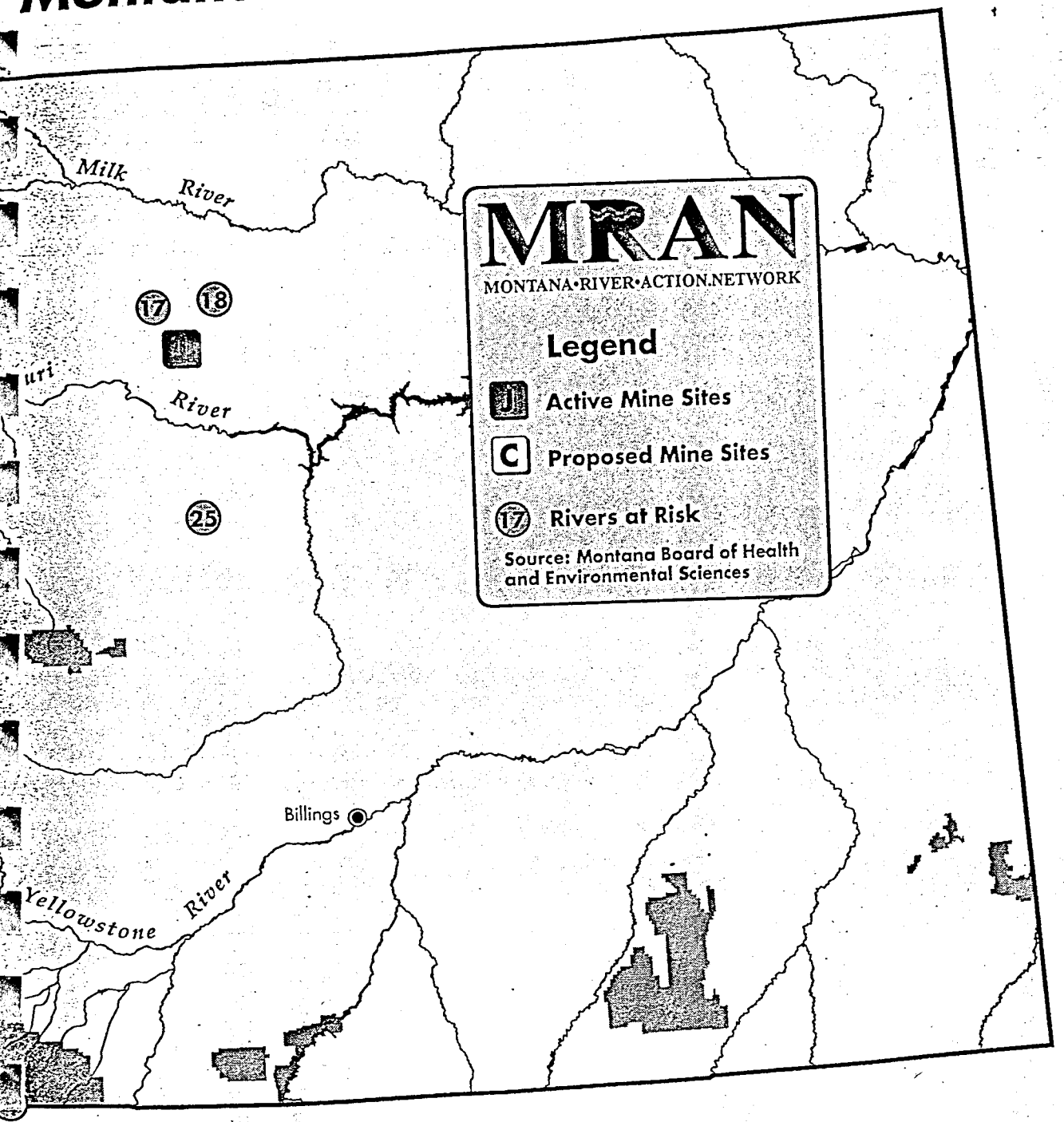
Natural resource extraction is important to Montana. One need only look to the Coal Tax Trust, the Resource Indemnity Trust, Hard-rock Impact funds, revenues paid to local governments and schools, and most importantly, to the jobs provided and the families those jobs support.

In conclusion, my company is a leader in the field of environmental remediation technology. We understand the importance of our environment. We understand what "no" regulation of industry does to the environment. These bills do not leave our environment unprotected and they meet our expectations for sound public policy. They protect our environment, our health, and our recreation, while giving us the benefits of stable industry, needed revenue, and jobs.

Thank you, we urge your support.

EXHIBIT 5
DATE 3-13-95
SB 330/331

t Risk
Montana's Waters



25 "Waters - at - Risk"
Mining Industry's War on Montana's Waters

	Water Body	County /Location	Mining Activity (historic, active or propose
1.	Blackfoot River	Lewis & Clark	Inactive or abandoned mining, and Proposed "7-up Pete Joint Venture Mine"
2.	Tenmile Creek	Lewis & Clark	Inactive or abandoned mining
3.	Silver Creek	Lewis & Clark	Inactive or abandoned mining
4.	Clark's Fork of the Yellowstone River and Fisher Creek	Park	Proposed "New World" Noranda-Crown Butte Mine
5.	Daisy Creek, Soda Butte Cr. & Stillwater	Park	Inactive or abandoned mining and proposed "New W "Noranda-Crown Butte Mine" and existing "Stillwate
6.	Yellowstone River	Park	Proposed dredge mining operation (Yankee Jim Canyc
7.	Pony (Drinking water)	Jefferson	Cyanide from "Pony Abandoned Gold Mill"
8.	Boulder River	Jefferson	Inactive or abandoned mines
9.	Cataract Creek	Jefferson	Inactive or abandoned mines
10.	Mainstem, Clark Fork R.	Sanders	Inactive or abandoned mines
11.	Rock Creek	Sanders	Inactive or abandoned mines, plus "ASARCO Rock C

12.	Belt Creek	Cascade	Inactive or abandoned mines
13.	Dry Fork, Belt Creek	Cascade	Inactive or abandoned mines
14.	W. Fk., Bitterroot River (Headwaters)	Ravalli	Inactive or abandoned mining
15.	Upper Clark Fork River	Powell / Missoula	Inactive or abandoned mining
16.	Grasshopper Creek	Beaverhead	Inactive or abandoned mining
17.	Rock Cr. (near Landusky)	Phillips	Inactive or abandoned mining
18.	Ruby & King Creeks	Phillips & Blaine	Inactive or abandoned mining and "Zortman-Landusky M
19.	Flint Creek	Granite & Deer Lodge	Inactive or abandoned mining
20.	Lake Creek	Lincoln	Inactive or abandoned mining
21.	Libby Creek	Lincoln	Inactive or abandoned mining & proposed "Noranda's Montanore Mine"
22.	Jefferson River (groundwater near river)	Madison	"Golden Sunlight Mine"
23.	Confederate Gulch	Broadwater	Inactive or abandoned mining
24.	East Boulder River	Sweet Grass	Proposed East Boulder Platinum Mine
25.	Chicago Gulch & Collar Gulch	Fergus	Inactive or abandoned mining

Mining Industry's War on Montana's Water

Active and Proposed Hardrock Mines

A. ASARCO (Proposed)

B. Noranda Montanore (Proposed)

C. 7 Up Pete Joint Venture (Proposed)

D. Pegasus Gold Beal Mt. (Active)

E. Golden Sunlight Mine (Active)

F. Jardine Joint Venture (Active)

G. Noranda-Crown Butte (Proposed)

H. East Boulder Mine (Proposed)

I. Stillwater Mine (Active)

J. Zortman-Landusky (Active)

Waters at Risk Press Conference
Technical Background

The waters identified in the graphics and supporting documents were derived from the 305-B report published by the Montana Board of Health and Environmental Sciences.

Any technical questions regarding reclassification or legislative efforts to degrade Montana's water quality should be addressed to:

Deborah Smith, Board President
Montana River Action Network
401 N. Last Chance Gulch
Helena, MT 59601
454-3441

or

Peter Aengst
Greater Yellowstone Coalition
Box 1874
Bozeman, MT 59771
586-1593

Greater Yellowstone Coalition

EXHIBIT 6
DATE 3-13-95
SB 330/331

Comments on SB 330 and SB 331. Submitted to the Montana House of Representatives Natural Resources Committee -- March 13, 1995.

Good afternoon Mr. Chairman, members of the committee. My name is Brian Kuehl. I represent the Greater Yellowstone Coalition based in Bozeman, Montana. The Greater Yellowstone Coalition works to protect the environment, communities, and sustainable economies in Greater Yellowstone including portions of Carbon, Sweetgrass, Park, Gallatin, Beaverhead, and Madison counties in Montana.

The Greater Yellowstone Coalition opposes SB 330 and 331. If passed, these bills will dramatically lower our state's water quality at the expense of our health, livelihood, and way of life. Attached is a list of the provisions in SB 330 and 331 that would lower the quality of Montana's rivers. For the sake of brevity, I will limit my oral testimony to one provision contained in SB 331. I want to emphasize, though, that correcting this one provision will not correct these bills; both are flawed to their very core.

SB 331 proposes lowering the arsenic standards to allow 1 in 1,000 Montanans to get cancer instead of the current level of 1 in 1,000,000 Montanans. Think about that change for a minute. In Libby, three people could get cancer due to this change. In Dillon, four people. In Lewistown, seven people. In Billings, sixty seven people. Which of your constituents are expendable? Do you think they will understand when you explain that a sacrifice had to be made and it was them? When you have the Missoula health department, and other health departments in the state objecting to this provision, it should give you pause. It should make you ask whether it is really good policy to subject eight hundred Montanans to cancer.

Again, this provision is just one of the many that are objectionable in these bills. These bills will affect <u>every</u> stream in Montana and <u>every</u> Montanan. These bills will adversely affect landowners, farmers, ranchers, recreation and other industries, and anglers, all of whom rely on the high quality of Montana's waters.

Before you vote on these bills, think of the Montanan's who will be affected by these bills and ask yourself one question -- will your constituents thank you for voting for these bills? If you agree that they will not, then table SB 330 and 331.

EXHIBIT 10
DATE 3-13-95
SB 330/331

Statement of Donald H. Kern

Mister Chairman and members of the committee:

My name is Donald Kern, and I have been asked to testify as an opponent of SB 330 and SB 331 because of my experience as a hydrologic technician on three national forests – the Flathead, the Bitterroot and the Nez Perce. I am not currently employed by nor do I speak for the Forest Service, however, my experience more than qualifies me to speak on the topic of water quality. I do speak as a member of the Board of Directors of the Canyon Coalition, a government watchdog group of over 400 members whose primary mission is protection of the Greater Glacier Ecosystem.

SB 330 and SB 331 would prohibit state water quality standards which are more stringent than federal regulation except in limited circumstances. This "permit to pollute" is a slap in the face to every Montanan who appreciates our precious clean water supplies. Many streams found within the boundaries of this state have been described by both state and federal agencies as "some of the most pristine waters to be found in the lower 48 states." We have the Berkeley Pit and the largest toxic superfund site in the world to remind us of what happens when regulations are not in place.

Changes in methodology, such as expressing standards in total dissolved instead of total recoverable methods are masked attempts to allow further pollution. This bill prohibits the state from preventing water pollution from many industrial sources, including mine tailings, cyanide heap leach pads and other wastes, and agricultural sources such as feedlots, which are frequently located on or near streambanks. SB 331 also requires the state to prepare costly analyses defending Montana's water quality standards which are stricter than federal standards.

Perhaps the ugliest part of these bills is their attempt to remove non-dissolved pollution from regulation; essentially eliminating much mining waste and other "chunk-type" wastes from regulation. This is totally unacceptable at a time when huge, foreign mining conglomerates are pushing to mine every corner of Montana and getting away with it under the protection of the antiquated 1872 Mining Law.

SB 330 and SB 331 would limit the number of streams protected by non-degradation standards, and allows increased degradation in the few streams that will remain protected. It also limits public participation in some non-degradation determination to those people who have property interests that may be affected by determinations, excluding the general public, who are the true owners of our state's waters. Once again, this is a veiled attempt to subsidize the mining and timber industries at the expense of the water quality in these streams.

Finally, these bills lower human health standards for carcinogens such as arsenic, and increase the risk of cancer by 100 fold, lowering standards from 1/1,000,000 to 1/10,000. Are we now expected to subsidize mining with our lives and the lives of our children?

The proposed changes in these bills are nothing more than attempts to gut more than 20 years of existing water quality regulations and open up pristine streams to unacceptable pollution. If industry views our current degradation rules as onerous and draconian, then I would suggest they look elsewhere to conduct their dirty business. Do not allow industry to bully you into lowering our water quality standards to the same standards as New Jersey. I strongly urge you to kill these bills and protect the pristine waters of Montana.

Thank you.

EXHIBIT 11
DATE 3-13-95
SB 330/331

To: Members of the House Natural Resources Committee

From: Land M. Lindbergh - Resident of Greenough, Montana

Subject: SB #330 and SB#331

Position: Opposed to SB. #330 and SB#331 in their entirety.

As a 30 year resident and property owner in the Big Blackfoot Valley, I am deeply concerned with the implications of SB #330 and SB #331 for the long term quality of the waters of Montana. Those of us who have been working very closely for a great many years with agricultural, industrial and environmental groups, as well as with state and federal agencies, are terribly disturbed by the prospects of such legislation destroying the gains that have been made to protect and enhance water quality in this state. We have put in a tremendous amount of time and effort to get to where we are now with water quality ... please don't destroy in a few ill-considered moments what has taken years to build into one of the finest examples of responsible state law in the United States. Please defeat both of these bills, now under consideration by your committee, in their entirety. Thank you very much for your serious consideration of my strongly held opinions on this legislation.

Sincerely,

Land M. Lindbergh

Land M. Lindbergh
Star Route Box 337
Greenough, Montana 59836

(1-406-244-5599)

EXHIBIT 12
DATE 3-13-95
SB 330 / 331

TO: Members of the Natural Resource Committee

FROM: The North Powell Conservation Supervisors

RE: SB 330 and SB 331

The Supervisors of the North Powell Conservation District (N.P.C.D.) would like to go on record as opposing SB 330 and SB 331. We feel that it is important that the Agriculture Industry show itself in support of good water quality regulations that improve Montana's water quality; not degradate it at the hands of any industry. The N.P.C.D has initiated The Nevada Creek Watershed Project which has put Agriculture in the Blackfoot Valley in the lead for BMP's in relation to water quality and land stewardship. In conclusion; we feel that we need to work together, not compromise, the pristine water that we all work and live for in Montana.

Thank you for your time and consideration on these bills.

James Stone - Member

David Cochran - President

David Mannix - Vice President

Tracy Manley - Member

Mick Goetle - Member

EXHIBIT 13
DATE 3-13-95
SB 330/331

Date: 3-13-95 Vicki Watson

From: Vicki Watson, Assoc. Professor, Biology, U. Montana
To: Montana House Natural Resource Committee

RE: Comments on SB 330 and 331

The last legislature directed the DHES to revise its nondegradation rules and water quality standards. These were carefully revised over a 2 year period with much input from scientists and a wide range of interests. Nobody got everything they wanted, but the process is probably the best we could have done. These new rules have just been put in place. Give them a chance to work. My reading of SB 330 and 331 is that they would be harder to enforce, cause more delays and legal wrangling, and give much less protection to human health, environmental quality and property values. They are too flawed to be salvaged by amendment. I urge you to stop these bills in this committee.

Here are some of the things SB 331 would do if passed:

* Make it harder for the Board of Health to adopt rules more stringent than general federal guidelines (which are set as the minimum acceptable levels); yet makes it easier for dischargers to get the Board to set site-specific standards for them that are weaker than the general federal guidelines.

* Greatly weaken water quality standards-- allowing a 1000 fold increase in cancer death risk from arsenic and a 10 fold increase in cancer death risk from other carcinogens. There are about 110 carcinogens with standards and many more that don't have standards. Given the Montana population, this could translate to as much as 800 more deaths from arsenic and about 1000 more deaths from other carcinogens. Do you want to be one those statistics?

* Change standards for metals to a form for which EPA has provided no guidance. DHES would have no meaningful way of enforcing such standards.

* Weaken protection for groundwater--changes in groundwater are not significant degradation as long as nitrate stays just a bit below the level at which the water becomes unfit to drink--apparently all other aspects of the groundwater can degrade as long as nitrates remain barely acceptable. There are many things wrong with this view. 1) Other substances can degrade groundwater besides nitrates. 2) Allowing substances to degrade to a point just short of the standard gives little protection in groundwater due to the uncertainty of characterizing groundwater. 3) Nitrates do not just harm water for drinking. If nitrates are allowed to rise to these high levels, many streams and lakes in Montana would become more enriched and would experience increased algae levels and reduced water clarity. Jack Stanford of the Biological Station at Flathead Lake speaking before the Board of Health stated that such a rise in nitrate levels in groundwaters around Flathead Lake would likely harm its quality significantly.

* Require that the Board of Health downgrade the classification of certain streams, and abandon the goal of restoring them. Many streams in the state that were damaged by poor historic mining practices were given classifications based on what they were like before the damage, with the intent of reclaiming these streams. Now the board would be forced to write off these streams and let them be classified industrial sewers.

* Require that standards be "cost effective and economically, environmentally and technologically feasible". But the bill does not define these terms. Lawyers would spend a lot more time arguing over what this means for every single permit than was the case when all dischargers simply had to meet health and environmental standards. Who says what is 'economically feasible'? The discharger pays the treatment bills but does not pay Montanan's medical bills or replace the lost fish. And what does 'environmentally feasible' mean? The usual explanation I am given for this is that some unpolluted Montana streams (such as those flowing out of Yellowstone) have some metals levels that exceed standards, so the standards should be as high as those naturally poisonous streams. This makes no sense. There are naturally poisonous mushrooms in the woods; does that mean we should allow poisons on all our foods to rise to the level where they are as poisonous as those mushrooms?

* Would allow groundwater to be pumped and discharged into surface water without a discharge permit or nondegradation permit as long as the groundwater was not altered from its 'ambient quality'. What if the water was pumped from a mine where the ambient water quality was contaminated by historical mining in the area? Or, as often happens, the pumping of groundwater starts the process of acid rock drainage which contaminates the water before it ever reaches the pump? Or if contaminated groundwater was being pumped up after a spill? Or the groundwater is naturally salty and makes the surface water more salty? All of these would degrade the surface water and possibly even violate state standards, but without tracking through a permit, we would not know this until too late.

* Existing law says it was unlawful to place wastes in a location where they are <u>likely</u> to cause water pollution--the new law says where they <u>will</u> cause water pollution. We can rarely say for certain that land disposed wastes will get in surface water. So now wastes can be placed where they are likely to cause water pollution as long as it is not certain that they will. Moreover, any waste put there with a federal or state permit is assumed not to pollute waters even though no water quality agency reviewed that permit. We have a lot of waste sites around the country permitted by other agencies that are now polluting the water and costing a lot to clean up.

* The entire section on administrative actions and penalties taken when the law is violated seems to be stricken by 331. Does that mean there is no longer any penalty for violating this act?

And what about SB 330 which amends the Nondegradation Law?

This act repeals the Nondegradation law by redefining degradation. Formerly, degradation was any worsening of water quality. SB 330 says degradation is the lowering of water quality in a way likely to affect a beneficial use. In the recent past, policy makers in DHES stated that the standards protect beneficial uses, so until standards are violated, beneficial uses are not affected. Hence there is no degradation until standards are violated. Yet the intent of the nondegradation law is to prevent water that is better than the standards from degrading to the standards. Catch 22.

SB 330 also redefines high quality waters (whose high quality must be maintained). In existing law, all state waters were high quality for any parameter (a measure, like the amount of copper) that was better than water quality standards. So even if one parameter was at or below the standard, all the other high quality parameters were to be maintained. So all state waters were high quality in some way and worthy of protection. Under SB 330 high quality waters do not include any that are not capable of supporting any of their designated uses. Many Montana waters are designated as not fully supporting their designated uses based on a parameter that does not meet standards. So if even one parameter exceeds the standard, the water might lose its high quality status and all its parameters could be allowed to degrade. Do we allow many of our waters to degrade to New Jersey conditions because we mistakenly allowed one parameter to degrade?

SB 330 also declares that streams that flow only a short time in the spring are not high quality waters worthy of protection from degradation even though these streams can be important for spawning and migration according to fisheries biologists.

SB 330 also says that most of us Montanans have no interest in water quality. It redefines 'interested persons' who may challenge the Board of Health's decisions on whether or not to allow degradation of state waters. Formerly, anyone of us who showed our interest by submitting oral or written testimony on the Board's preliminary decision could challenge their final decision. Under SB 330 they can be challenged only by those wishing to degrade the water or by someone who owns property that would be directly affected. Perhaps we could claim our bodies are our property and would be affected if we unwittingly took a drink or ate a fish from the wrong place.

Formerly, the DHES was required to review permits to degrade state waters every 5 years to see if a technique had been developed that would allow a discharger to stop degrading state waters. Under SB 330 the DHES <u>may</u> do this, but is not required to. Given budget cuts, the DHES won't be doing anything it is not required to do, so even if a low cost technology comes along that would make degradation unneccesary, it won't be used.

Many people in Montana have the mistaken notion that the laws that protect our air, water, land and wildlife hurt our economy. Two of the strongest parts of our economy are our tourism industry and our real estate values. Many people visit Montana and many others relocate here for retirement or to operate small businesses. These keep our economy healthy. Mining is a relatively small part of our economy according to studies by U. Montana economists. Weakening our water quality and land reclamation laws in the name of helping our economy is counterproductive. Protecting our high quality environment is the best way to keep Montana's economy healthy in the long term.

EXHIBIT 15
DATE 3-13-95
SB 330 +SB331

Testimony Concernng SB330 and SB331

Mr. Chairman, my name is Jim Curtis. I live at 1318 Khan abad Drive, Missoula, MT. In presenting this statement I am representing the Montana Chapter of the Sierra Club, but I am also representing myself.

The Montana Chapter strongly opposes SB330 an SB331. In opposing these two bills we are proud to associate ourselves with the many other organzation and the many ordinary citizens of Montana that have helped in the team effort to assure that one of Montana's most important and precious natural resouces, clean water, has been protected by good state legislation.

Suddenly, in 1995, we find ourselves astounded and angered that the protective laws that have served Montana well for the past two decades are under frontal attack, apparently from industries who stand to profit by being allowed to make clean waters unclean, and safe drinking water less safe.

Granted, these laws are not perfect, but their imperfections are not those that have been alleged in the Statements of Intent found in SB330 and SB331. The regulations for protection of our clean waters do not lack in scientfic justification. The system is not broken. The only significant flaws are that the proective laws need to be strengthened, not weakened, and they need to be more effectively implemented and enforced.

Mr. Chairman, I would be interested to meet the legislator who can truly state that he was elected on a platform to promote the pollution of Montana's clean ground and surface waters. If any Montana voters thought they were voting to make their streams less able to sustain fish and aquatic life, they were few and far between. I do not believe that Montanans thought they were voting to have the waters from their wells and municipal water supplies made less safe to drink, more likely to cause cancer.

If you do not have a mandate from the majority of Montana voters to make the waters in this state less safe and clean, the only motivation for this legislation has tO be coming from those who will profit from a license to pollute.

The question before this committee is really very simple. Are you going to grant that license to potential industrial polluters? We in the Montana Chapter sincerely hope that the answer is a resouding "NO."

EXHIBIT 16
DATE 3-13-95
SB 330 & SB 331

MULLENDORE, TAWNEY & WATT, P.C.

ATTORNEYS AT LAW

BERT G. MULLENDORE (MT, WA, AK)
LIP D. TAWNEY (MT) (1949-1995)
LLIAM C. WATT (MT)
ANT D. PARKER (MT, WA)
ROTHY L. BROWNLOW (MT)
RA J. JOHNSON (MT)

TER MICHAEL MELOY (MT)
OF COUNSEL

310 WEST SPRUCE STREET
MISSOULA, MONTANA 59802

TELEPHONE: (406) 542-5000
FAX: (406) 542-8920

March 13, 1995

House Natural Resources Committee
Montana's 54th Legislative Assembly
Capitol Station
Helena, MT 59620

SB 330 and SB 331 - Efforts to Weaken Montana's Water Quality Laws

Dear Natural Resource Committee Members:

We are writing to urge you to reject efforts to weaken the state's Water Quality Act provisions which protect Montana's nationally-recognized high quality waters from degradation.

Montana is experiencing renewed economic growth and vitality because it has clean water and good overall environmental quality. We represent a number of growing and successful businesses in Montana that would not be here if it wasn't for our clean water and our high environmental quality. The changes being proposed in SB 330 and SB 331 will result in a lowering of water quality, and increased risks to the health of Montanans for generations to come.

We believe these proposed changes send the wrong message to Montanans and others interested in investing in our state, and in the long run, will be a detriment to our economy. Montana's reputation for world-renowned trout fishing and recreational opportunities will be damaged if we weaken existing water quality laws.

In 1971 the Montana Legislature adopted a nondegradation policy that prohibited new and increased sources of pollution from degrading Montana's high quality waters. This nondegradation policy was modified in 1993 through SB 401, in an effort endorsed by the Department of Health and Environmental Sciences, the mining industry, municipalities, and other regulated industries. We have not yet had an opportunity to implement and test this new law, and the regulations adopted by DHES.

We believe that weakening Montana's water quality laws as proposed in SB 330 and SB 331 would constitute an unconstitutional legislative act. Article IX, Section 1 of the

Montana Constitution prohibits the Legislature from allowing any degradation of Montana's high quality waters. The proper method for allowing such degradation, as required by the Montana constitution, is to submit the issue to a vote of the people.

The history of the Constitutional Convention supports the position that the Montana Legislature cannot provide for the degradation of Montana waters. The comments on the majority proposal clarify that this section applies to water, and that Montana's waters cannot be degraded:

> Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phase by the legislature and courts; there is no question that it cannot be degraded. [Emphasis added.]

Vol. II, Proceedings of Constitutional Convention of State of Montana, pg. 555 (1971-1972). This prohibition on degradation is further supported by comments of Delate C.B. McNeil from Polson, who stated that, "our intention was to permit no degradation of the present environment of Montana and affirmatively require enhancement of what we have now." *Vol. IV, Proceedings of Constitutional Convention of State of Montana, pg. 1205 (1971-1972).*

We ask you to reject the recent efforts to expressly allow pollution and degradation of our waters to the detriment of the public's health and Montana's environment. If you have any questions regarding these matters, please feel free to call.

Sincerely,

Mullendore, Tawney & Watt, P.C.

Grant D. Parker

Sara J. Johnson

c: Governor Racicot

f\n-c\hsentres.ltr

EXHIBIT 18
DATE 3-13-95
SB 330 & SB 331

We the undersigned strongly oppose any measures that would weaken Montana's water quality laws. In our view, Senate Bills 330, 331, and 382 are a giant step backwards in our efforts to maintain clean water in our lakes and streams.

Michelle Biedscheid	455 Glenwood Rd Whitefish, Mt.	862-3570
Jamie B. Metzmaker	915 Dakota Whitefish, MT	862-7960
Pete Metzmaker	915 DAKOTA WF	862-7960
Todd R Becker	905 Dakota #A	862 0604
J. Puttick	905 DAKOTA A	862-0604
Gail Leonard	514 Pine Place, Wfish	862-5807
Leo Keane	514 Pine Place Wfish	862-5807
George D Widener R	15 Central Ave, Wfish,	862-1298
Kent N. Mortimer	Box 1564, Wfish	862-1090
Patricia K Wideners	15 Central Whitefish, MT	862-1298 59937
Mike Biedscheid	455 Glenwood WF	862-3510
Karen C. Zuzile	35 Dakota Ave WF	862-5700

EXHIBIT 19
DATE 3-13-95
SB 330 & SB331

Ladies and Gentlemen,

I am not a lobbyist or a special interest. I am an average concerned voting citizen.

Hasn't this state and this country paid enough for the unguarded environmental henhouse? Does history always have to repeat itself?

Most resource users don't pay much of anything for the land they use or raw materials they extract. Can't they at least be forced to extract or use the resources in the most scientifically sound methods available to prevent degradation of these multi-use lands we all hold as precious?

Allowing industry to write legislation is wrong! Allowing industry to write environmental legislation is ludicrous! If we protect these lands to the best of our ability, then their worth will only appreciate exponentially for all future generations to come.

Thank You!

Totally against 330-331

Bill Davis
315 C
Lafrande Cannon
Helena, Mt.

EXHIBIT 21
DATE 3-13-95
SB 330 & SB 33

Boussard/Reifel
Two Heart Creek
24425 Doney Rd.
Arlee, MT 59821 USA
Phone-(406)-726-3357
Fax-(406)-726-41360

March 9, 1995

To: House of Representatives
Natural Resources Committee

From: Dana Boussard, 24425 Doney Rd. Arlee, MT 59821

Re: **SB 231, 349, 362, 330, 331**

As a concerned Montana citizen, I am writing to urge you to vote **no** on the above Senate bills. They will degrade and destroy Montana's precious resources. All of these bills weaken Montana's strong environmental laws---laws that we citizens who deserve a clean environment for ourselves and our children, have fought for over the last 20 years.

Living in "The Last Best Place" is a honor for all of us. That name was coined by the state for its pristine qualities of air, water, and scenery.....not for its polluted air, its clearcut forests, and its dirty streams!

Please vote NO on these bills and save Montana's true assets! Once they are gone.....they are gone.

Thankyou
Dana Boussard

EXHIBIT 24
DATE 3-13-95
SB 331

March 12, 1995

Memo to: House Natural Resources Committee
Representative Dick Knox, Chairman

Subject Senate Bill 331

I'm a retired citizen, operator of a small business near Whitefish and am representing myself and the Citizens for A Better Flathead, a public interest group of several hundred members.

We are strongly opposed to Senate Bill 331 for several reasons:

1. Montana's water , both quantity and quality, represent the most important economic asset of this State. It also represents the most fundamental element in our quality of life. Several recent surveys in Flathead County have identified preservation of water quality as the most important public concern and any degradation is damaging to our future and our children's and grandchildren's future.

2. The proposed standards changes along with changes in the non-degradation regulations will have negative impacts such as:

* An increase in toxic disease causing agents for ever degrading quality of life and that is unacceptable to us.

* Modifying non-degradation rules which would allow for increased loading of nutrients such as Nitrogen will accelerate the degradation of lakes and streams throughout the state.

* This does not help maintain employment in the extractive industries, it only enables increased profits for those industries. Personnel costs are always the key cost-cutting target in any business. Automation will eliminate and change jobs in this industry independent of any legislative action.

* This legislation will surely damage the State's case against ARCO while at the same time this legislature is considering additional funding for that litigation--doesn't make sense. An opinion from the Attorney General on this aspect is needed.

* Once polluted, the recovery costs will be beyond the State's capability to fund, e.g., the ARCO site, Lake Washington-300 Million, Lake Tahoe-multiple Billions.

3. The State waters, streams, rivers, and lakes are in the public domain and are thus the private property rights of every resident of this State. Any degradation is an infringement of those rights.

We believe there is little if anything to gain from this legislation and EVERYTHING to lose thus we urge you to table it and not pass it through for House consideration.

Respectfully,

Don Spivey
51 Penney Lane
Columbia Falls, MT 59912
257-0724

.cc Governor Marc Racicot

MONTANA WILDLIFE FEDERATION
P.O. Box 1175,
Helena, MT 59624
Ph: 406-449-7604
Fax 406-449-8946

March 13, 1995

EXHIBIT 25
DATE 3-13-95
SB 331

House Natural Resources Committee
Helena, Montana

Chairman Knox and Committee Members,

I am Alan Rollo, representing the Montana Wildlife Federation. I would like to start by thanking the sponsor of SB 331 for being concerned about the business climate of this state. We do feel though that this bill has missed that mark significantly and for that reason the we oppose it.

A key issue here today is why should this bill push primarily one industries agenda to impact so many other worthy businesses in Montana. This state's waters are the hub to many businesses that ensure a diversity in our economic world which makes it hard for us to see the rational for this bill. I am not just talking small dollars here with the other businesses, I am talking major contributors to our tax base, such as: the non-resident tourism industry that brought in $1.2 billion last year, the angler business that brings in approximately $205 million annually, the agriculture community that irrigates over 1,700,000 acres and has over 2,500,000 head of cattle, the in-state recreational trade, other local community businesses that utilize alot of water, let alone the communities themselves that require water for their citizens. All have one common denominator - **clean water.**

The next significant issue is the amount of water quality problems that Montana citizens are contending with, with our current water quality laws and we want to relax them more. I have brought only a few examples of where people that want the law changed have already caused significant problems to individuals water supplies which I have attached to my testimony. People can replace alot of items that they acquire but they cannot replace their loved ones or easily clean their degraded water once contaminated.

The last key point is the fiscal requirements that apply to this bill. In a time of budget constraints why should we modify the water quality laws considerably after two years of heavy debate and numerous hearings around the state. $116,000 to rewrite the water quality standards is a large dollar figure and then you have the major confusion as everyone tries to understand the new law, only two years after the last major rewrite of the water quality laws.

What I have mentioned today should not be considered lightly, for the businesses that I have mentioned are just a few that allow Montana to maintain a steady and healthy economic growth, not the boom and bust of earlier years seen with some industries. We must look at all businesses when we look at this bill.

So in recap, there are three key reasons that I would like to suggest, would enable this committee to feel good about tabling this bill:

1. Economics of other good businesses in Montana;
2. The health and welfare of our citizens; and
3. The time and money just spent to reaccomplish the water quality rules.

For those three reasons alone, we request that this committee table SB 331. Thank you.

Sincerely,

Alan Rollo
Montana Wildlife Federation

Printed on

EXHIBIT 26
DATE 3-13-95
SB 331

Montana Department of Fish, Wildlife & Parks

Submitted by Jim Jensen
Montana Environmental Information
Center during SB 331 hearing.

COPY

P.O. Box 200701
Helena, MT 59620-0701
(406) 444-3186
FAX: (406) 444-4952
March 9, 1995

Governor Racicot
Room 204, State Capitol
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Racicot:

As the group you charged with developing a recovery strategy for bull trout, we are aware of a number of bills pending before the Legislature which may affect our work.

We today forward to you a memo prepared by our Scientific Group which expresses concern over four bills which may adversely impact bull trout recovery. In addition, Montana Fish, Wildlife & Parks has informed us that HB 192 may constrain our ability to work with local watershed groups in developing watershed recovery strategies. There may be other bills which will affect, positively or negatively, bull trout restoration.

We do not have the time to fully investigate each of these bills, nor do we have a structure which makes it easy to either oppose or support specific legislation. We all recognize, however, that the work of the Legislature may affect our ability to successfully complete a bull trout recovery plan. Given this, we hope that you will take your goals for bull trout recovery fully into account as you consider the merits of the laws being passed by this Legislature.

Sincerely,

FOR/ Larry Peterman, Chairman
Bull Trout Restoration Team

/ss

3/10/95

TO: Bull Trout Restoration Group

FROM: Bull Trout Scientific Group

The Scientfic Group has reviewed the implications of the following bills by discussing their content with staff of the Water Quality Bureau, Dept. of State Lands, and Fish, Wildlife and Parks and feels that they are in conflict with bull trout restoration.

The group was split on what to recommend to the Restoration Group. Generally, half of the scientific group recommends that the Governor veto these bills if they reach his desk in their present form. The other half suggest that we inform the restoration team of the problems with the bills and they decide what to recommend to the Governor.

Any other bills that will lower water quality standards, or cause land use changes that negatively impact water quality or aquatic habitat should be reviewed for their impact on bull trout. If they will potentially have negative impacts they should be dealt with in a similar fashion as the following bills.

HB201

Dept. of State Lands would be required to cut ~~50~~ 45-55 Million board feet of timber annually from state owned timber lands. One imporant reason DSL does not cut that much now is that they take into account cumulative watershed effects, so they mitigate for surrounding land practices. If this bill passes, they will have to be more aggressive in their timber harvest. This bill ~~would~~ may make their policy for mitigation more difficult.

Bull trout are dependent on healthy watersheds, and impairment would have negative impacts to bull trout populations.

HB 263

Dept. of State Lands would have to manage their lands for maximum income to the State. DSL would have less flexibility to protect fisheries resources like they did when they made it policy not to harvest timber in SMZ's and to review and fix any grazing problems in bull trout streams.

SB 331

Changes the water quality standard for metals in streams from total recoverable metals to dissolved. This means than instead of acidifying the samples and extracting all of the ecologically available metals for analysis, the samples would be filtered and analyzed. Typically, this would mean some relaxation of the standard for metals. Metals in the sediments would not be included in the standards. Even though metals that are in particulate are

COPY

PlumCreek Timber Company, L.P.
Flathead Unit
2050 Highway 2 West P.O. Box 8990
Kalispell, MT 59904-1990
406/755-1498

March 9, 1995

The Honorable Marc Racicot
Governor
The State of Montana
State Capitol Building
Helena, Montana 59620

Dear Governor Racicot:

As a member of your Bull Trout Restoration Team, I want to share my opinion on the comments regarding pending legislation forwarded to you by the Team from our Science Group.

Based on the conversation at the Restoration Team meeting, I do not believe that either the Science Group or the Team itself have sufficient information on which to base their concerns with pending legislation. I believe that more detailed and accurate information regarding the legislation is available from the various state agencies that have evaluated these bills.

Plum Creek remains committed to working towards constructive solutions based on sound scientific analysis to recover bull trout, as evidenced by our participation on the Restoration Team as well as our research and actions on the ground.

Sincerely,

W. A. Parson

Bill Parson
Director of Operations

Northern Plains Resource Council

EXHIBIT 27
DATE 3-13-95
SB 331

Testimony of Julia Page
for the Northern Plains Resource Council
on Senate Bill 331
before the House Natural Resources Committee
March 13, 1995

Mr. Chairman, members of the Committee, for the record, my name is Julia Page. I live in Gardiner, Montana where I operate a whitewater rafting company. I am speaking today on behalf of members of the Northern Plains Resource Council.

I am here today to express our deep opposition to Senate Bill 331. Senator Beck's bill also was written by lobbyists and lawyers for the mining industry. Taken in concert with SB 330, it would remove most of the protections that have enabled Montana to retain an enormously valuable natural resource which is rapidly disappearing elsewhere - clean water.

In SB 331, the mining industry again wants to change our laws because it claims strict protection of clean water is unfair, too restrictive and too expensive. Again, I say Montana's water resources are exceptional and they require and deserve exceptional protection.

New section 2 of SB 331 requires the establishment of site-specific water quality standards at the request of members of the regulated community. The only practical reason for requesting site-specific standards is to obtain lower standards. Therefore, this provision of the bill will just make it easier for polluters to exploit Montana waters that are already damaged and continue to pollute them further. This is a direct contradiction of the goals of the federal Clean Water Act, the Montana Water Quality Act and the state Constitution which are to protect, maintain and improve water quality. (Page 4, lines 14-20)

Like its companion SB 330, this bill redefines degradation to allow more pollution of state waters. (Page 4, line 30)

SB331 changes the definition of "state waters" so if an industry or anyone impounds state water, it would no longer be protected as "state waters". Since most impoundments leak or seep into groundwater, this provision provides yet another way to hurt the quality of Montana's water. (Page 7, lines 6-7)

EXHIBIT 28
DATE 3-13-95
SB 331

MontPIRG

Montana Public Interest Research Group
360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against Senate Bill 331, March 13, 1995
Chairman Knox and members of the House Natural Resource Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

As an organization advocating good government and sound environmental protection, MontPIRG rises in opposition to Senate Bill 331.

Senate Bill 331 would allow the pollution of Montana's waters by prohibiting the state from preventing water pollution from industrial sources. By prohibiting the state from adopting rules more stringent than federal standards without exhaustive and expensive studies, this bill is likely to doom Montana to the quality of water found in states like New Jersey.

Moreover, Senate Bill 331 would lower the acceptable cancer risk for heavy metals to 1 in 10,000 and for arsenic to 1 in 1000. This is simply an unacceptable risk to human health regardless of the purported benefits.

Senate Bill 331 also has the questionable effect of allowing the placement of wastes near water without water quality review if the placement is authorized by another permitting authority. This removes an important guarantee that potential effects to water quality by a permitted activity will be considered.

For these reasons MontPIRG urges this committee to table this attempt to weaken the laws protecting water quality.

MISSOULA COUNTY
MISSOULA

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 W ALDER ST
MISSOULA MT 59802-4123
(406) 523-4755

EXHIBIT 29
DATE 3-13-95
SB 331

Dick Knox, Chairman
House Natural Resources Committee

Mr. Chairman, members of the committee,

The Missoula City-County Health Department is opposed to those modifications included in Senate Bill 331 which substantially weaken state law. Missoula County is responsible for the operation and maintenance of 3 state permitted community sewer systems which accept and treat effluent from homes and businesses in communities such as Lolo, Clinton, El Mar Estates, and Golden West. We do everything in our power to insure that these systems are properly operated to meet State requirements, but also to guarantee that our discharge has the lowest impact on state waters that is achievable by our equipment. We view the use of our state waters for effluent discharge as a privilege that needs to be carefully protected. Residents of Missoula County place an extremely high value on the quality of our waters and we realize the fragile nature of our lakes rivers and aquifers.

Even with the current water quality rules, we know from research conducted by the Department of Fish Wildlife and Parks that the Clark Fork River in Missoula County has far fewer fish than a stream of its type should have. How can we expect to reverse this situation with a weakened water quality law?

The residents of Milltown have had to find a new source of drinking water, the water that those homes had used for decades was contaminated with arsenic. Weakening the standard for arsenic will not bring that aquifer back into use. Missoula will be saddled with the discharge of two to twenty pounds per day of arsenic for the next couple thousand years into the headwaters of the Missoula aquifer which is the sole source of drinking water for nearly sixty thousand people.

Septic systems in the Linda Vista area have seriously polluted area drinking water wells with bacteria and nitrate. In fact, roughly 25 percent of the water in these wells originated in a septic system. This bill would allow that same percentage of contamination from septic systems using level two treatment and still rank it "nonsignificant" with regard to non-degradation.

With these comments in mind we make the following recommendations for amendments to this bill:

Strike new section two in its entirety. This requires the Board of Health to adopt weakened site specific standards when someone pollutes an area so badly that it becomes a state or

federal super-fund site. It makes no sense to require a lower set of standards for those who have the greatest impact on our water resources.

Strike the amendment to the definition of non-degradation in section 3. One of the purposes of non-degradation is to provide an adequate margin of safety to prevent devastating impacts on streams or long lasting impact on aquifers. The definition in the current bill essentially a violation of a standard before degradation is deemed to have occurred.

In the amendments to the definition of "state waters" the term "privately owned" should be deleted unless we want publicly owned sewage lagoons to be considered as "state waters". Apparently the drafters of the bill forgot that public systems serve far more businesses than all the "private" systems in the state.

In section 5. (75-5-301) should be amended to read (line 25) "streams that due to natural sporadic flow, do not support an aquatic system ..." We need to be sure that we don't mandate a weakening in standards for streams that are artificially de-watered.

In section 5 (2), (A) the one in a thousand risk level for the arsenic standard should be stricken. There is no evidence to indicate that cancer for arsenic is preferable to cancer from other chemicals. Just because some carcinogens occur naturally such as arsenic, doesn't mean that we shouldn't minimize the risk when the source is caused by man as is the case in mining and arsenic. We also question lowering the risk level for other carcinogens from one-in-a-million to one-in-a-hundred-thousand.

Strike section 5 (2), (D). This section apparently limits the level of protection of any stream or lake to that of those standards set for human consumption. Please note that the human stomach can stand levels of many contaminants which are lethal to all aquatic life. This provision is contrary to the new criteria set in new section 1, which allows standards that are necessary for protection. "Equal" should be replaced with "less stringent than"

Section 5 (5), (d), (I)-(IV) sets standards for degradation from nitrate. It is important to note that the legislature would be setting aside its own non-degradation criteria in setting the standards for non-degradation at 75% of the drinking water standard. It is also a change in precedent to take the authority from the State Board of Health. Most ground waters in Missoula County are .01 milligrams per liter nitrate in their natural state. This standard allows an increase of 750 times background to be considered non-significant if level two-treatment is used. If the level-two system fails to remove nitrate as predicted, the concentration could go as high as 15 milligrams per liter, which is 50% over

the drinking water standard. From this it is apparent that the proposals do not provide an adequate margin of safety. These standards would make it legal to cause pollution such as that in Linda Vista where ground water is contaminated and unwary home buyers have been required to install public sewer at a cost of $13,000 per home. It is our preference that the standards set by the Board of Health stand and that this section be stricken. In any case pristine waters should not be allowed to exceed 5 milligrams per liter. At a minimum (III) should be stricken.

Section 11 (75-5-605) should delete the new language "where they will" and return the old language "in a location where they are likely to". The other new language is reasonable. The old language should be retained because the new language stops the state from preventing pollution and only allows it to respond to contamination which has already occurred.

This concludes our specific comments. We respectfully to ask you to carefully consider the amount of amount of enjoyment, concern and love that Montanans have for our State waters. This bill as written, jeopardizes and, in some instances sacrifices those waters to other interests. Please don't let a few examples of regulatory mistakes cause wholesale repeal of our water law and remember that much of our states waters are still greatly diminished in quality and fisheries production due to the influences of man.

Jim Carlson

Director
Environmental Health

League of Women Voters
of Montana

EXHIBIT 29
DATE 3-13-95
SB 331

Senate Bill 331 by Senator Beck
HOUSE NATURAL RESOURCE COMMITTEE: March 13 1995

TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

We are certainly in favor of making the administration of our water laws more efficient and fair, but not at the expense of weakening our Water Quality Standards, as is the intent of this bill. Requiring coordination between appropriate departments is a good idea and should benefit both the permittee and the State.

However, allowing the permittee to adopt his own standards as allowed in the Site-specific standards section is quite inappropriate.

The requirement of extensive proof, and studies to establish standards higher than federal standards are much too stringent and expensive. We have water standards appropriate for our state and these should not be lowered to the Federal levels.

This bill weakens water protection by allowing one excess cancer death per 1,000 Montanans from arsenic, instead of the current cancer risk of one death in 1 million.

Again, as in several other bills, this bill favors economic development over the protection of the health of the people and the environment of Montana. What is the point of having a good job if you must sacrifice your own health or that of the people of the state so that you can't enjoy the fruits of that job?

The lack of permits and review are unacceptable. We urge you to table this bill.

Willa Hall
Legislative Corps, LWVMT

EXHIBIT 20
DATE 3-13-95
SB 331

330

My name is Paul Hawks. I am a third generation rancher from Melville. A little over two years ago, the State of Montana had a nondegradation policy requiring new sources of pollution to maintain existing water quality. The 1971 law hoped to maintain the high quality of Montana's waters as the state developed. We take for granted our high quality water, but it is the envy of most other states. By the 1960's, water quality in other states had become so bad that the federal Clean Water Act was passed to set minimum standards for public health. A basic tenet of that law was to maintain and improve existing water quality.

Montana also adopted that basic tenet in both its Constitution and its Water Quality Law. With no rules to implement the nondegradation policy, however,that issue came to a head last session in SB 401. Industry felt that the policy was too onerous and everyone agreed that a workable policy did not exist. After bitter debate and a two year rule making process, the State finally adopted a potentially workable process last summer, nearly a quarter century after the law was passed.

Neither side was totally happy. But the policy adopted agreed that some degradation does occur when development occurs, and it attempted to balance this with the philosophy that it was in the State's best long term interest to maintain and improve our water quality whenever possible. The policy categorically excluded many activities as "nonsignificant" and even allowed violations of the minimum standards in "mixing zones" as long as they were of the smallest practicable size. This policy has never been used ,and SB 331 seeks to ensure that it never is.

Practicably this bill abandons our commitment to maintaining and improving our water quality, and will let all state water ,except in national parks and wilderness areas, be degraded over time to the lowest common denominator, ie. minimum federal standards. Is this really the legacy that this committe wants to leave to future generations?

How many of you consider yourselves as conservatives? I was raised to believe that a true conservative protected the things he needed, used things wisely, and left them in as good or better shape than he found them. He was a true steward of the land and his community. He didn't take a little here, take a little there, and line his own pockets at his neighbors expense.

A lot of work went into the present policy under SB401. It has the potential to solve the contentiousness around this issue. If passed, SB 330 will let the cat out of the bag again. We'll be right back where we started and probably in court. Years away from a solution.....

NERAL CONTRACTING

JOHN WILKINSON CONSTRUCTION

329 FLOOD ROAD
GREAT FALLS, MONTANA 59404

EXHIBIT 3/8
DATE 3-13-95
SB 331

March 10, 1995

Senator Tom Beck's Office
Attn: Elaine
Montana State Capital
Helena, Montana

Re: SB 331

Dear Committee Members

I am writing you concerning Senate Bill 331 introduced by Senator Beck which I understand has been referred to the House's Natural Resources Committee. I would appreciate you forwarding this letter to the chair of that committee.

Senate Bill 331 attempts to interject some reasonableness in the Department of Health and Environmental Sciences' recent interpretation of Montana's water nondegradation law. I would like to stress the importance of passage of this bill to not only our small company and our community but no doubt to many Montanans.

We are in the planning stages of a residential development in the greater Great Falls area which would not only provide needed lots for a growing community, but would also provide direct road access (shortening the current access by 5-6 miles) from the local fire department to over 250 existing residences. Not only would public safety be enhanced, but I am told that most of those served in the area would see a significant reduction in their fire insurance premiums.

However, development is currently hindered by DHES' administrative rules enacted just last year regarding subdivisions and the nondegradation of ground water. More specifically, in determining whether to allow any subdivision, the Department requires a nitrate test of the "first water" occurring under the property no matter how insignificant the aquifer or zone of saturation nor whether the water is used for any purpose. Although the EPA drinking water standard is 10 mg/l, DHES's administrative rules prohibit any realistic development of the property if the nitrate level is greater than 5.0 mg/l. The only alternative is to obtain a permit to degrade; a process which is quite lengthy, expensive, and unlikely to result in a favorable result. I have included with this letter a copy of ARM 16.20.712, Table I, demonstrating this point.

With Senate Bill 331, as currently amended, the environmental standards become a little more reasonable. Environmental safeguards would still be required by use of a Level II type

septic system in most circumstances, and the resulting nitrogen concentration could not exceed 7.5 mg/l, still well below the EPA standard of 10 mg/l.

As a Montanan I value our quality water. I also appreciate a healthy economy. It is foolish to believe that the two are incompatible. Enactment of Senate Bill 331 would certainly maintain quality water but would also loosen the current strangle-hold on residential development.

Sincerely,

Tim Wilkinson

EXISTING NITROGEN CONCENTRATION IN GROUND WATER AS OF APRIL 29, 1993	PRIMARY SOURCE OF EXISTING NITROGEN	PREDICTED NITROGEN CONCENTRATION AT THE EDGE OF THE MIXING ZONE AFTER THE PROPOSED ACTIVITY	REQUIREMENTS FOR NONSIGNIFICANCE FOR HUMAN WASTE DISPOSAL	REQUIREMENTS FOR NONSIGNIFICANCE FOR DISPOSAL OF OTHER WASTES
< 2.5 MG/L	HUMAN WASTE	<2.5 MG/L	NONE	NONE
		2.5 <5.0 MG/L	LEVEL 2 TREATMENT	NONE
		5<7.5	SIGNIFICANT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
	OTHER	<5.0 MG/L	NONE	NONE
		5<7.5 MG/L	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		7.5<10	SIGNIFICANT	SIGNIFICANT
2.5-5.0 MG/L	HUMAN WASTE	<5 MG/L	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		5<7.5	SIGNIFICANT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
	OTHER	<5	NONE	NONE
		5<7.5	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		>7.5	SIGNIFICANT	SIGNIFICANT
5.0-7.5	HUMAN WASTE	ANY INCREASE	SIGNIFICANT	SIGNIFICANT
	OTHER	<7.5	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		7.5	SIGNIFICANT	SIGNIFICANT
>7.5	ANY	ANY INCREASE	SIGNIFICANT	SIGNIFICANT
		10 or greater	NOT ALLOWED VIOLATES STANDARDS	NOT ALLOWED VIOLATES STANDARDS
ANY LEVEL	ANY	NO CHANGE	NOT SIGNIFICANT	NOT SIGNIFICANT

EXHIBIT 32
DATE 3-13-95
SB 331

Proposed Amendments to SB 331
Third Reading Copy, As Amended

1. Page 4, line 14
Following: "life."
Insert: "(1)"

2. Page 4, line 15
Following: "chapter,"
Insert: "and except as provided in subsection (2),"

3. Page 4, line 20
Following: "criteria."
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures the applicant must comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The boar's decision must be based on sound scientific, technical and available site specific evidence.

4. Page 4, line 30
Strike: "~~for a parameter~~ FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE"
Insert: "for a parameter"

5. Page 7, lines 25 - 28
Strike: "The department shall coordinate permit proceedings under this chapter with permit proceedings involving the same project conducted by the department of state lands under Title 82, chapter 4, and by the department of natural resources and conservation under Title 75, chapter 20, FOLLOWING THE TIME SCHEDULE OF THE LEAD AGENCY."
Insert: "When the department's review of a permit application submitted under another chapter is required or requested, the department will coordinate the review with the review conducted by the agency or unit under the other chapter following the time schedule for that review."

6. Page 8, line 30
Following: "FOR"
Strike: "MEASURING"

7. Page 8, line 30
Following: "CARCINOGENS"

Strike: "IN SURFACE WATER"

8. Page 9, line 4
Strike: Subsection (B) in its entirety
Renumber: subsequent subsections

9. Page 9, line 8
Following: "(D)"
Insert: "Notwithstanding subsection (A) above,"

10. Page 13, line 3
Following: "(I)"
Insert: "THE DISCHARGE DOES NOT CONTAIN INDUSTRIAL WASTE, SEWAGE, OR OTHER WASTES,
(II)"

11. Page 13, line 4
Following: "PARAMETERS"
Delete: "; OR"
Insert: ", AND"

12. Page 13, line 5
Strike: "(II)"
Insert: "(III)"

13. Page 17, line 29
Following: "account"
Strike: "AND THE COURT SHALL CONSIDER"

14. Page 19, line 15
Following: "CLAUSE."
Strike: "SECTION 75-5-614 DOES NOT AFFECT PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT]."
Insert: "THIS ACT DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS ACT OR TO CLAIMS MADE IN THOSE ACTIONS, EXCEPT THAT COMPLIANCE PLANS RESULTING FROM SUCH ACTIONS MUST REFLECT CHANGES MADE BY THIS ACT.

15. Page 19
Following: Section 18
Insert: "NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF SB 330 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 75-5-103(4), DEFINITION OF "DEGRADATION", THEN THE DEFINITION OF DEGRADATION PROVIDED IN SECTION 3 OF THIS ACT SHALL PREVAIL, AND THE DEFINITION PROVIDED IN SB 330 IS VOID.

-End-

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. 331

DATE 3-13-95 SPONSOR(S) Senator Pest

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DONALD KERN 1805 JOSLYN #89 HELENA	CANYON COALITION	331	X	
Willa Hall	LWVMT	331	X	
Ken Knapp Box 383 Helena	MRAA	331	X	
W James Kembel	City of Billings	331		✓
Brian Kuehl	GYC	331	X	
ALAN Rollo	MWF	331	X	
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASS'N. OF MONTANA	331	X	
DON STEVENS	SELF & CITIZENS for a Better Flathead	331	X	
GEORGE OCHENSKI	TROUT UNLIMITED	331	X	
Mike Grimes	Self	331	X	
Barb Grimes	Blackfoot Legacy	331	X	
Doug Parker	Crown Butte	331		X
Jim Emerson	Self	331	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 331

DATE 3-13-95 SPONSOR(S) Senator Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Fitzpatrick	Pegasus Gold	SB 331		X
Peter Aengst	self	SB 331	X	
MIKE MURPHY	MT. WATER RES. ASSN.			X
Raymond Lazuk	Golden Sunlight Mine	331		X
SANDRA WASH	ARCO	SB 331		✓
LARRY BROWN	Ag Prod. Assoc.	330 331		✓
BOB WILLIAMS	MT MINERALS	331		✓
Steve Gilbert	Self		X	
Peggy Trenk	WETA	SB 331		X
Tony Schoonen	Anaconda Sportsmen	SB 331	X	
Michael Downey	Self	331	X	
Cecil Davis	Self	330	X	
DICK HOLDORF	SKYLINE SPORTSMEN	330	✓	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. S.B. 331

DATE 2-13-95 SPONSOR(S) Sen Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Curtis, 1318 Khonaba d Dr. Msla	MT Chapter Sierra Club	331	X	
Jon Klutan	Self	331	X	
Colleen Dangs	Realtor	331	X	X
Paul Rods	Self and Powell Cty SCD	331	X	
MIKE GEARY	SELF	331	X	
Howard Cumpa	Billings Assn Realtors	331		X
Jim Barrett	BA Lodge Cty	331	X	
JERRY KENNEY	BILLINGS REALTORS	331		X
DALE HAWES	MELVILLE	331	X	
Julia Page	NPRC	331	X	
Louise Bruce	Mont. Wilderness Assoc.	331	X	
Jim Mockler	MT. Coal Council	331		✓
CHRIS Tweeten	Mt. Dept. of Justice	331	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB331

DATE 3-13-95 SPONSOR(S) Sen Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT	
Hope Stevens	SELF	331	X		
Don Allen	MT. Woodproducts Assn.	331		✓	
MARK SHAPLEY	ISLAND MOUNTAIN PROTOCOLS		X		
Jim Carlson	Msla Co		✓		
Randy Person	Ft. Belknap Tribes		✓		
Kim Milburn	City of Helena	331		✓	w/changes pg. 2 Pitcher
Sally Johnson	Self		✓		
Grant Parker	Self	331	X		
Kelly Rosenleaf	City Council City of Missoula	331	X		
Stan Frasier	Self	331	X		
Tamara J. Johnson	SURE			X	
Russ Ritter	MT Resources			X	
John Bloomquist	Mt. Stockgrowers	331		X	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB-331

DATE 3-13-95 SPONSOR(S) Sen Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
GAIL ABERCROMBIE	MT Petroleum Assn	331		X
509 Daly Vicki Watson Missoula, MT	Myself	331	✓	
Ken Williams	MPC/Entech	331		✓
J.V. Bennett	Mont PIRG	331	✓	
Lorna Frank	MT. Farm Bureau	331		✓
Don Peoples	Mont. Technology Co./MCRDC			✓
Chris Gallus	MTC/MCRDC			✓
Jack Lynch	CEO Butte-Silver Bow			✓
Steve Kelly	FOWS		X	
Lorree Orr	Concerned Citizens of Troy	331	X	
Rosemary Harmon Helena		331	X	
Heidi Halverson	self	331	X	
Dylan Torcoletti	"	331	X	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB331

DATE 3-13-95 SPONSOR(S) Sen. Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Gatchell	MT Wilderness Assoc	331	X	
Steve Pilcher	DHES	331	X	
Carl Schweitzer	MT Cont Assn	331		X
Janet Ellis	MT Audubon	331	X	
David Owen	MT chamber	331		✓
DAVID HEMION	MT Assn. of Churches	331	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON SB 331

Motion: REP. BILL TASH MOVED SB 331 BE CONCURRED IN.

Motion/Vote: REP. TASH MOVED TECHNICAL AMENDMENTS TO SB 331. EXHIBIT 1 Voice vote was taken. Motion carried unanimously.

Motion: REP. TASH MOVED SEN. BECK'S AMENDMENTS TO SB 331. EXHIBIT 2

Discussion:

Alan Joscelyn, Attorney, explained SEN. BECK's amendments.

REP. TASH asked Mr. Joscelyn if any of the amendments change any of the assumptions on the fiscal note. Mr. Joscelyn said the assumptions related to the bill before it was amended in the Senate so they don't necessarily apply to the bill.

REP. HAL HARPER said if the committee passes the amendments it would be rewriting Montana's water quality laws. REP. HARPER said he wouldn't vote for the amendments or the bill. Montanans want their water protected. Water quality in the state is declining and SB 331 will hasten it.

REP. TASH said he respected REP. HARPER's expertise in water quality but accepted the amendments because the Department of Health and Environmental Sciences (DHES) has worked very carefully to ensure SB 331 would provide the direction the department needs.

REP. BOB RANEY asked Abe Horpestad (DHES) to explain amendment no. 8. Mr. Horpestad said amendment no. 8 ensures that if EPA comes up with a drinking water standard more stringent than the risk level specified in SB 331, the department will adopt the stricter standard.

Vote: Voice vote was taken. Motion on SEN. BECK's amendments carried 12 to 6. REP. RANEY, REP. HARPER, REP. CARLEY TUSS, REP. EMILY SWANSON, REP. JON ELLINGSON and REP. DAVID EWER voted no.

Motion: REP. TASH MOVED SB 331 BE CONCURRED IN AS AMENDED.

Discussion:

REP. TASH said SB 331 has had a lot of time and effort put into it. The bill offers industry reasonable and practical compliance rules it can work with and are stringent enough to protect the environment.

REP. RANEY said last session HB 401 was passed, which he protested, because the purpose of the bill was to lower water quality standards. There was a long session, with public involvement in the writing of new rules. The rules that were

developed still didn't satisfy the industries that want to exploit Montana waters for the purpose of making money. That is why SB 330 and SB 331 were composed. The citizens of Montana won't profit from the bills, but industries will.

REP. HARPER agreed with **REP. RANEY** and said SB 330 and SB 331 aren't DHES bills, they are industry bills. In fact, the person who explained the amendments, represents industry. SB 331 will seriously weaken Montana's water quality in the near future and that impact will worsen as time goes on.

Vote: Roll call vote was taken. **Motion carried 12 to 6. REP. RANEY, REP. ELLINGSON, REP. EWER, REP. HARPER, REP. SWANSON and REP. TUSS voted no.**

EXECUTIVE ACTION ON SB 346

Motion: **REP. JAY STOVALL MOVED SB 346 BE CONCURRED IN.**

Motion/Vote : **REP. HAL HARPER MOVED AMENDMENTS TO SB 346.** EXHIBIT 3 Voice vote was taken. **Motion carried unanimously.**

Motion: **REP. STOVALL MOVED SB 346 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. BOB RANEY asked **Abe Horpestad, DHES,** if a permit was really needed to make a stream better. **Mr. Horpestad** said currently, when a permit is issued, water quality standards have to be met. In many cases that can't be done. SB 346 enables the department to write a temporary permit that can be complied with while the water is being cleaned up. **REP. RANEY** said as far as he was concerned, a permit that is issued for 20 years is not a temporary permit. **Mr. Horpestad** reminded **REP. RANEY** that the permit would be effective up to 20 years. There will also be a review every three years and if necessary, a public hearing will be held.

REP. BILL TASH said SB 346 is a solution bill that gives industry the opportunity to work within a reasonable, temporary permit allowance, to get the streams cleaned up.

REP. ROBERT STORY said SB 346 is the department's recognition of reality.

REP. HAL HARPER said he would put his faith in the department and support the bill.

Vote: Voice vote was taken. **Motion carried unanimously.**

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 3-21-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer			✓
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler			✓
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 331** (third reading copy -- blue) **be concurred in as amended.**

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Tash

And, that such amendments read:

1. Page 4, line 14.
Following: "life."
Insert: "(1)"

2. Page 4, line 15.
Following: "chapter"
Insert: "and except as provided in subsection (2)"

3. Page 4.
Following: line 20
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of

Committee Vote:

the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence."

4. Page 4, line 30.
Strike: "IF" through "USE"

5. Page 7, line 6.
Strike: "privately owned"

6. Page 7, lines 25 through 28.
Strike: "The" on line 25 through "AGENCY." on line 28
Insert: "When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review."

7. Page 8, line 25.
Following: "(2)"
Insert: "(a)"

8. Page 8, line 28.
Following: "PREVENTION."
Insert: "(b)"

9. Page 8, line 30.
Strike: "(A)"
Insert: "(i)"
Strike: "MEASURING"
Strike: "IN SURFACE WATER"

10. Page 9, line 3.
Strike: ";"
Insert: ". However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen."

11. Page 9, lines 4 through 6.
Strike: "(B)" on line 4 through "(C)" on line 6
Insert: "(ii)"

12. Page 9, lines 6 through 9.
Strike: ";" on line 6 through "ACT];" on line 9

Insert: "."

13. Page 10, line 7.
Strike: "TO"
Insert: "of nitrate in"
Strike: "QUALITY"

14. Page 13.
Following: line 2
Insert: "(i) the discharge does not contain industrial waste, sewage, or other wastes;"
Renumber: subsequent subsections

15. Page 13, line 4.
Strike: "OR"
Insert: "and"

16. Page 13, line 8.
Strike: "may"
Insert: "must"

17. Page 17, line 29.
Strike: "AND" through "CONSIDER"

18. Page, 19
Following: line 13
Insert: "NEW SECTION. **Section 17. Coordination instruction.** If Senate Bill No. 330 is passed and approved and if it includes a section that amends the definition of "degradation" contained in 75-5-103, then the definition of degradation provided in [section 3 of this act], amending 75-5-103, is effective and the definition provided in Senate Bill No. 330 is void."
Renumber: subsequent sections

19. Page 19, lines 15 and 16.
Strike: "SECTION" through "ACT]."
Insert: "[This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act]."

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 3-21-95 BILL NO. SB 331 NUMBER _____

MOTION: BE CONCURRED IN AS AMENDED

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs	✓	
Rep. Hal Harper		✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall	✓	
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss		✓
Rep. Doug Wagner	✓	

EXHIBIT 1
DATE 3-21-95
SB 331

Amendments to Senate Bill No. 331
Third Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 7, 1995

1. Page 8, line 25.
Following: "(2)"
Insert: "(a)"

2. Page 8, line 28.
Following: "PREVENTION."
Insert: "(b)"

3. Page 8, line 30.
Strike: "(A)"
Insert: "(i)"

4. Page 9, line 4.
Strike: "(B)"
Insert: "(ii)"

5. Page 9, line 6.
Strike: "(C)"
Insert: "(iii)"

6. Page 9, line 8.
Strike: "(D)"
Insert: "(iv)"

7. Page 9, line 9.
Strike: ";"
Insert: "."

8. Page 13, line 8.
Strike: "may"
Insert: "must"

Amendments to Senate Bill No. 331
Third Reading Copy

EXHIBIT 21
DATE 3-21-95
SB 331

Requested by Sen. Beck
For the Committee on Natural Resource

Prepared by Michael S. Kakuk
March 16, 1995

1. Page 4, line 14.
Following: "life."
Insert: "(1)"

2. Page 4, line 15.
Following: "chapter"
Insert: "and except as provided in subsection (2)"

3. Page 4.
Following: line 20
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence."

4. Page 4, line 30.
Strike: "IF" through "USE"

5. Page 7, line 6.
Strike: "privately owned"

6. Page 7, lines 25 through 28.
Strike: "The" on line 25 through "AGENCY." on line 28
Insert: "When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review."

7. Page 8, line 30.
Strike: "MEASURING"

Strike: "IN SURFACE WATER"

8. Page 9, line 3.
Strike: ";"
Insert: ". However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen."

9. Page 9, lines 4 and 5.
Strike: subsection (B) in its entirety
Renumber: subsequent subsections

10. Page 9, lines 7 through 9.
Strike: "AND" on line 7 through "ACT];" on line 9

11. Page 10, line 7.
Strike: "TO"
Insert: "of nitrate in"
Strike: "QUALITY"

12. Page 13.
Following: line 2
Insert: "(i) the discharge does not contain industrial waste, sewage, or other wastes;"
Renumber: subsequent subsections

13. Page 13, line 4.
Strike: "OR"
Insert: "and"

14. Page 17, line 29.
Strike: "AND" through "CONSIDER"

15. Page, 19
Following: line 13
Insert: "NEW SECTION. **Section 17. Coordination instruction.** If Senate Bill No. 330 is passed and approved and if it includes a section that amends the definition of "degradation" contained in 75-5-103, then the definition of degradation provided in [section 3 of this act] is effective and the definition provided in Senate Bill No. 330 is void."
Renumber: subsequent sections

16. Page 19, lines 15 and 16.
Strike: "SECTION" through "ACT]."
Insert: "[This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act]."